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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE CHRYSLER-DODGE-JEEP ECODIESEL
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

No. 3:17-md-02777-EMC

SECOND AMENDED CLASS ACTION
COMPLAINT

This document relates to:

DEMAND FOR JURY TRIAL

Chavez, et al. v. FCA US LLC, et al.,
Case No. 3:16-cv-06909-EMC

JOSE CHAVEZ, ROBERT CORNETT,
BENJAMIN GREENBERG, WAYNE
TONNESEN, MIGUEL FRAGOSO, JEFF
SCHOLZ, and ANDREW LOESCHER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

FCA US LLC, a Delaware Limited Liability
Company; ROBERT BOSCH GMBH, a
corporation organized under the laws of Germany;
and ROBERT BOSCH LLC, a Delaware Limited
Liability Company,

Defendants.

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2	DEMAND FOR JURY TRIAL	387

1 Plaintiffs Jose Chavez, Robert Cornett, Benjamin Greenberg, Wayne Tonnesen, Miguel
2 Fragoso, Jeff Scholz, and Andrew Loescher, individually and on behalf of all others similarly
3 situated (the “Class”), allege the following based upon the investigation of counsel, the review of
4 scientific papers, and the investigation of experts:

5 I. INTRODUCTION

6 1. This case involves trucks sold as EcoDiesels, which—like the infamous Volkswagen
7 diesels—are hardly “Eco” and in fact belch out harmful pollutants far in excess of both U.S. and
8 State of California emissions standards, but also in excess of what a reasonable consumer would
9 expect from an “Eco” vehicle.

10 2. The world is besieged by a scandal involving tens of millions of diesel cars that
11 violate relevant emissions standards and were sold under false pretenses that they were “clean” or
12 “cleaner than gas vehicles,” or environmentally friendly. The United States, most European
13 countries, and other nations have implemented strict emissions standards for diesel engines designed
14 to protect all of us from the harmful byproducts found in the exhaust of diesel engines.

15 3. Diesel engines pose a difficult challenge to the environment because they have an
16 inherent trade-off between power, fuel efficiency, and emissions. Compared to gasoline engines,
17 diesel engines generally produce greater torque, low-end power, better drivability, and much higher
18 fuel efficiency. But these benefits come at the cost of much dirtier and more harmful emissions.

19 4. One byproduct of diesel combustion is oxides of nitrogen (“NOx”), which generally
20 describes several compounds comprised of nitrogen and oxygen atoms. These compounds are
21 formed in the cylinder of the engine during the high temperature combustion process. NOx pollution
22 contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the
23 atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers,
24 including serious respiratory illnesses and premature death due to respiratory-related or
25 cardiovascular-related effects. The U.S. government, through the Environmental Protection Agency
26 (EPA), and many states, like California, have passed and enforced laws designed to protect U.S.
27 citizens from these pollutants and certain chemicals and agents known to cause disease in humans.
28 Automobile manufacturers must abide by these laws and must adhere to EPA rules and regulations.

1 5. Seeing a major opportunity for growth, almost all of the major automobile
2 manufacturers rushed to develop “clean diesel” and promoted new diesel vehicles as environmentally
3 friendly and clean. Volkswagen, Mercedes, GM, Fiat Chrysler America (FCA), and other
4 manufacturers began selling diesel cars and trucks as more powerful, yet also as an environmentally
5 friendly alternative to gasoline vehicles. And the marketing worked, as millions of diesel vehicles
6 were purchased between 2007 and 2016.

7 6. The green bubble with respect to diesel vehicles popped on September 18, 2015,
8 when the EPA issued a Notice of Violation of the Clean Air Act (the “First NOV”) to Volkswagen
9 Group of America, Audi AG, and Volkswagen America for installing illegal “defeat devices” in
10 2009–2015 Volkswagen and Audi diesel cars equipped with 2.0-liter diesel engines. A defeat
11 device, as defined by the EPA, is any apparatus that unduly reduces the effectiveness of emissions
12 control systems under conditions a vehicle may reasonably be expected to experience. The EPA
13 found that the Volkswagen/Audi defeat device allowed the vehicles to pass emissions testing while
14 in the real world these vehicles polluted far in excess of emissions standards. The California Air
15 Resources Board also announced that it had initiated an enforcement investigation of Volkswagen
16 pertaining to the vehicles at issue in the First NOV.

17 7. On September 22, 2015, Volkswagen announced that 11 million diesel cars
18 worldwide were installed with the same defeat device software that had evaded emissions testing by
19 U.S. regulators. Contemporaneously, Volkswagen announced that it had set aside reserves of 6.5
20 billion euros (\$7.3 billion) in the third quarter to address the matter.¹

21 8. Volkswagen wasn’t alone—soon, government agencies began to reveal that many
22 manufacturers had produced dozens of models that were exceeding emissions standards.

23 9. The “Dieselgate” issue is not limited to passenger vehicles, and hence this case. In
24 2001, the EPA announced stringent emissions standards for heavy-duty diesel engines, slated to take
25

26
27 ¹ See Nathan Bomey, *Volkswagen Emission Scandal Widens: 11 Million Cars Affected*, USA
28 Today (Sept. 22, 2015), <http://www.usatoday.com/story/money/cars/2015/09/22/volkswagen-emissions-scandal/72605874/>.

effect in 2010. Cummins Inc. and Chrysler (now known as FCA US LLC²) saw a golden business opportunity and worked together to build a truck that, at least on paper, met these standards, three years ahead of schedule. Cummins announced the new truck as the:³

[S]trongest, cleanest, quietest best-in-class 2007 Cummins Turbo Diesel. Leapfrogging the competition, the Cummins 6.7-liter Turbo Diesel engine, used exclusively in Dodge Ram 2500 and 3500 Heavy Duty pickup trucks, has increased displacement[,] providing increased horsepower and torque[,] while achieving the world's lowest 2010 Environmental Protection Agency (EPA) NOx standard a full three years ahead of the requirements.

10. FCA decided to push into this market beyond the Dodge Ram 2500 and 3500 and, in 2014, it introduced the Dodge Ram “EcoDiesel” and the Grand Cherokee Overland “EcoDiesel.”

11. To appeal to environmentally conscious consumers, FCA *vigorously* markets its EcoDiesel vehicles as “clean diesel” with ultra-low emissions, high fuel economy, and powerful torque and towing capacity. FCA calls its EcoDiesel “ultra clean,” “emissions compliant,” and claims that “**no NOx**” exits the tailpipe. FCA charges a premium for EcoDiesel-equipped vehicles. For example, selecting the 3.0-liter EcoDiesel engine for the 2016 Dodge Ram 1500 Laramie adds \$4,770 to the purchase price. And the 2016 Jeep Grand Cherokee Overland EcoDiesel costs \$4,500 more than its gasoline counterpart.

12. These representations are deceptive and false. FCA has programmed its EcoDiesel vehicles to significantly reduce the effectiveness of the NOx reduction systems during real-world driving conditions. The EPA has determined that the Affected Vehicles contain defeat devices. On January 12, 2017, the EPA issued a notice of violation against FCA because FCA “failed to disclose Auxiliary Emission Control Devices (AECs)” in the Affected Vehicles.⁴ The EPA identified eight specific devices that cause the vehicle to perform effectively when being tested for compliance, and then reduce the effectiveness of the emissions control system during normal operation and use.

² FCA stands for Fiat Chrysler Automobiles.

³ *Cummins Reveals Best-In-Class 2007 Turbo Diesel Engine*, Cummins Inc. (Jan. 23, 2007), http://investor.cummins.com/phoenix.zhtml?c=112916&p=irol-newsArticle_pf&ID=953050.

⁴ EPA’s January 12, 2017 Notice of Violation (“NOV”) to Fiat Chrysler Automobiles, available at <https://www.epa.gov/sites/production/files/2017-01/documents/fca-caa-nov-2017-01-12.pdf>.

1 13. “Once again,” said CARB Chair Mary D. Nichols about FCA’s cheating, “a major
2 automaker made the business decision to skirt the rules and got caught.”⁵

3 14. And Plaintiffs’ on-road testing has confirmed that FCA’s so-called EcoDiesel cars
4 produced NOx emissions at an average of 222 mg/mile in city driving (four times the FTP standard
5 of 50 mg/mile) and 353 mg/mile in highway driving (five times higher than the U.S. highway
6 standard of 70 mg/mile). In many instances, NOx values were in excess of 1,600 mg/mile, more
7 than 20 times the standards.

8 15. Thus, FCA manufactures, designs, markets, sells, and leases certain “EcoDiesel”
9 vehicles as if they are “reduced emissions” cars that are cleaner than gasoline cars, when, in fact,
10 these FCA vehicles are not “Eco” and emit far more pollutants than their gasoline-fueled
11 counterparts. Plaintiffs allege that the following FCA models powered by EcoDiesel engines are
12 affected by the unlawful, unfair, deceptive, and otherwise defective emission controls utilized by
13 FCA: 2014–2016 Dodge Ram 1500 and 2014–2016 Jeep Grand Cherokee (the “Affected Vehicles”).

14 16. In addition, FCA markets the vehicles as fuel efficient, if not the “best” of any full-
15 sized pickup. Without cheating emissions, FCA could not achieve the fuel economy and range it
16 promises.

17 17. FCA did not previously disclose to Plaintiffs or Class members that in real-world
18 driving conditions, the Affected Vehicles can only achieve high fuel economy and powerful towing
19 by spewing unmitigated NOx into the air. FCA never disclosed that it prioritizes engine power and
20 profits over people.

21 18. FCA never disclosed to consumers that the Affected Vehicles may be “clean” diesels
22 in very limited circumstances, but are “dirty” diesels under most driving conditions. FCA never
23 disclosed that it prioritizes engine power and profits over the environment and people’s time and
24 money. FCA never disclosed that the Affected Vehicles’ emissions materially exceed the emissions
25 from gasoline-powered vehicles, that the emissions exceed what a reasonable consumer would
26 expect from a “clean diesel,” and that the emissions materially exceed applicable emissions limits in

27 ⁵ EPA News Release, *EPA Notifies Fiat Chrysler of Clean Air Act Violations* (Jan.12, 2017),
28 available at <https://www.epa.gov/newsreleases/epa-notifies-fiat-chrysler-clean-air-act-violations>.

1 real-world driving conditions. And FCA collected a premium for these trucks by selling them at
2 thousands of dollars over the cost of a comparable gas truck.

3 19. FCA did not act alone. At the heart of the diesel scandal in the United States and
4 Europe are Bosch GmbH and Bosch LLC (together, “Bosch”). Bosch was an active and knowing
5 participant in the scheme to evade U.S. emissions requirements. Bosch manufactured and tested the
6 electronic diesel control (“EDC”) that allowed FCA to implement the defeat device.

7 20. Plaintiffs bring this action individually and on behalf of all other current and former
8 owners or lessees of the Affected Vehicles. Plaintiffs seek damages, injunctive relief, and equitable
9 relief for FCA’s misconduct related to the design, manufacture, marketing, sale, and lease of the
10 Affected Vehicles, as alleged in this Complaint.

11 **II. JURISDICTION**

12 21. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331
13 because Plaintiffs’ claims arise under the RICO Act, 18 U.S.C. § 1962. The Court also has diversity
14 jurisdiction because Plaintiffs and Defendants reside in different states. The Court has supplemental
15 jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367. This Court also has original
16 jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a)(1), as modified by the Class Action
17 Fairness Act of 2005, because Plaintiffs and Defendants are citizens of different states; there are
18 more than 100 members of the Class (as defined herein); the aggregate amount in controversy
19 exceeds \$5 million, exclusive of attorneys’ fees, interest, and costs; and Class members reside across
20 the United States. The citizenship of each party is described further below in the “Parties” section.

21 22. This Court has personal jurisdiction over each Defendant pursuant to 18 U.S.C.
22 § 1965(b) & (d), and/or Cal. Code Civ. P. § 410.10. This Court has personal jurisdiction over
23 Defendants because they have minimum contacts with the United States, this judicial district, and
24 this State, and intentionally availed themselves of the laws of the United States and this state by
25 conducting a substantial amount of business throughout the state, including the design, manufacture,
26 distribution, testing, sale, lease, and/or warranty of FCA vehicles in this State and District. At least
27 in part because of Defendants’ misconduct as alleged in this lawsuit, Affected Vehicles ended up on
28 this state’s roads and in dozens of franchise dealerships.

III. VENUE

23. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Moreover, FCA has marketed, advertised, sold, and leased the Affected Vehicles within this District.

IV. PARTIES

A. Plaintiffs

1. California Plaintiff

24. Plaintiff Jose Chavez (for the purpose of this paragraph, "Plaintiff") is an individual residing in Antioch, California. On August 26, 2016, Plaintiff purchased a new model year 2016 Dodge Ram 1500 EcoDiesel from Hilltop Chrysler Jeep Dodge, an authorized FCA dealer in Richmond, California. Plaintiff purchased, and still owns, this vehicle. Unknown to Plaintiff at the time the vehicle was purchased, it only achieved its promised fuel economy and performance because it was equipped with an emissions system that, during normal driving conditions, emitted many multiples of the allowed level of pollutants such as NOx. FCA's unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA knew about, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a "clean diesel," complied with U.S. emissions standards, was properly EPA-certified, and would retain all of its promised fuel economy and performance throughout its useful life. Plaintiff selected and ultimately purchased his vehicle, in part, because of the EcoDiesel system, as represented through advertisements and representations made by FCA. Plaintiff recalls that before he purchased the vehicle, he reviewed advertisements on FCA's website and representations from FCA's authorized dealer touting the efficiency, fuel economy, and power and performance of the engine. He also recalls that before purchasing the vehicle, he reviewed advertisements on FCA's website and representations from FCA's authorized dealer that the Dodge Ram 1500 complied with U.S. emissions standards and was a low-emitting vehicle. None of the advertisements reviewed or

1 representations received by Plaintiff contained any disclosure relating to the unlawfully high
2 emissions. Had FCA disclosed this design, and the fact that the Ram 1500 actually emitted
3 unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle, or would have
4 paid less for it. Plaintiff and each Class member has suffered an ascertainable loss as a result of
5 FCA's omissions and/or misrepresentations associated with the EcoDiesel engine system, including,
6 but not limited to, a high premium for the EcoDiesel engine compared to what they would have paid
7 for a gas-powered engine, out-of-pocket losses, and future attempted repairs, future additional fuel
8 costs, decreased performance of the vehicles, and diminished value of the vehicles. Neither FCA nor
9 any of its agents, dealers, or other representatives informed Plaintiff or Class members of the
10 existence of the unlawfully high emissions and/or defective nature of the EcoDiesel engine system of
11 the Affected Vehicles prior to purchase.

12 **2. Florida Plaintiff**

13 25. Plaintiff Robert Cornett (for the purpose of this paragraph, "Plaintiff") is a citizen of
14 Florida domiciled in Port Charlotte, Florida. On or about April 24, 2016, Plaintiff purchased a 2016
15 Ram 1500 EcoDiesel (for the purpose of this paragraph, the "Affected Vehicle") from Galeana
16 Chrysler Dodge Jeep, an authorized FCA dealership in Ft. Meyers, Florida. Plaintiff purchased, and
17 still owns, this vehicle. Plaintiff conducted extensive research regarding the Affected Vehicle's
18 emissions system by reading the Ram website. He specifically recalls reading about the high fuel
19 mileage, the low emissions, and the overall performance of the vehicle. None of the advertisements
20 reviewed or representations received by Plaintiff contained any disclosure relating to the unlawfully
21 high emissions. Had FCA disclosed this design, and the fact that the Ram 1500 EcoDiesel actually
22 emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle. Plaintiff
23 selected and ultimately purchased his vehicle because of the EcoDiesel system, as represented
24 through advertisements and representations made by FCA and its authorized dealers. Unknown to
25 Plaintiff at the time the vehicle was purchased, it only achieved its promised fuel economy and
26 performance because it was equipped with an emissions system that, during normal driving
27 conditions, emitted many multiples of the allowed level of pollutants such as NOx. FCA's unfair,
28 unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the

1 vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted
2 repairs, and diminished value of his vehicle. FCA knew about, or recklessly disregarded, the
3 inadequate emission controls during normal driving conditions, but did not disclose such facts or
4 their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that
5 his vehicle was a “clean diesel,” complied with U.S. emissions standards, was properly EPA-
6 certified, and would retain all of its promised fuel economy and performance throughout its useful
7 life.

8 **3. Massachusetts Plaintiff**

9 26. Plaintiff Benjamin Greenberg (for the purpose of this paragraph, “Plaintiff”) is a
10 citizen of Massachusetts, domiciled in Maynard, Massachusetts. On or about March 24, 2015,
11 Plaintiff leased a new 2015 Jeep Grand Cherokee EcoDiesel Overland edition (for the purpose of this
12 paragraph, the “Affected Vehicle”) from Kelly Jeep Chrysler, an FCA-authorized dealer in
13 Lynnfield, Massachusetts. Plaintiff leased, and still possesses, this vehicle. Prior to his purchase,
14 Plaintiff extensively researched the Affected Vehicle’s emissions system by reading the official Jeep
15 website and speaking with authorized dealer representatives. He specifically recalls reading that the
16 EcoDiesel V6 engine delivered superior efficiency, fuel economy, and durability with low emissions,
17 and was properly EPA-certified and complied with EPA emissions requirements and standards.
18 None of the advertisements reviewed or representations received by Plaintiff contained any
19 disclosure relating to the unlawfully high emissions. Had FCA disclosed this design, and the fact
20 that the Jeep Grand Cherokee EcoDiesel actually emitted unlawfully high levels of pollutants,
21 Plaintiff would not have leased the vehicle, or would have paid less for it. Plaintiff selected and
22 ultimately leased his vehicle, in part, because of the EcoDiesel system, as represented through
23 advertisements and representations made by FCA and its authorized dealers. Unknown to Plaintiff at
24 the time the vehicle was leased, it only achieved its promised fuel economy and performance because
25 it was equipped with an emissions system that, during normal driving conditions, emitted many
26 multiples of the allowed level of pollutants such as NOx. FCA’s unfair, unlawful, and deceptive
27 conduct in designing, manufacturing, marketing, selling, and leasing the vehicle without proper
28 emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished

1 value of his vehicle. FCA knew about, or recklessly disregarded, the inadequate emission controls
2 during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so
3 Plaintiff leased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean
4 diesel,” complied with U.S. emissions standards, was properly EPA-certified, and would retain all of
5 its promised fuel economy and performance throughout its useful life.

6 **4. New Jersey Plaintiff**

7 27. Plaintiff Wayne Tonnesen (for the purpose of this paragraph, “Plaintiff”) is a citizen
8 of New Jersey domiciled in Tuckerton, New Jersey. On or about November 24, 2016, Plaintiff
9 purchased a new 2016 Ram 1500 EcoDiesel (for the purpose of this paragraph, the “Affected
10 Vehicle”) from Johnson Motors, an authorized FCA dealership in Columbia, Wisconsin. Plaintiff
11 purchased, and still owns, this vehicle. Plaintiff conducted extensive research regarding the Affected
12 Vehicle’s emissions system by reading the Ram website. He specifically recalls reading about the
13 high gas mileage, the low emissions, and the overall performance of the vehicle. None of the
14 advertisements reviewed or representations received by Plaintiff contained any disclosure relating to
15 the unlawfully high emissions. Had FCA disclosed this design, and the fact that the Ram 1500
16 EcoDiesel actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased
17 the vehicle. Plaintiff selected and ultimately purchased his vehicle because of the EcoDiesel system,
18 as represented through advertisements and representations made by FCA and its authorized dealers.
19 Unknown to Plaintiff at the time the vehicle was purchased, it only achieved its promised fuel
20 economy and performance because it was equipped with an emissions system that, during normal
21 driving conditions, emitted many multiples of the allowed level of pollutants such as NOx. FCA’s
22 unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing
23 the vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted
24 repairs, and diminished value of his vehicle. FCA knew about, or recklessly disregarded, the
25 inadequate emission controls during normal driving conditions, but did not disclose such facts or
26 their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that
27 his vehicle was a “clean diesel,” complied with U.S. emissions standards, was properly EPA-

1 certified, and would retain all of its promised fuel economy and performance throughout its useful
2 life.

3 **5. North Carolina Plaintiff**

4 28. Plaintiff Miguel Fragoso (for the purpose of this paragraph, “Plaintiff”) is a citizen of
5 North Carolina domiciled in Cary, North Carolina. On or about August 4, 2016, Plaintiff leased a
6 new 2016 Jeep Grand Cherokee EcoDiesel (for the purpose of this paragraph, the “Affected
7 Vehicle”) from Leith Jeep, an FCA-authorized dealer in Cary, North Carolina. Plaintiff purchased,
8 and still owns, this vehicle. Plaintiff researched the Affected Vehicle’s emissions system by reading
9 FCA’s official website and speaking with authorized dealer representatives. He specifically recalls
10 reading on FCA’s website that his gas mileage would exceed 26 miles per gallon. None of the
11 advertisements reviewed or representations received by Plaintiff contained any disclosure relating to
12 the unlawfully high emissions. Had FCA disclosed this design, and the fact that the Jeep Grand
13 Cherokee actually emitted unlawfully high levels of pollutants, Plaintiff would not have leased the
14 vehicle, or would have paid less for it. Plaintiff selected and ultimately leased his vehicle, in part,
15 because of the EcoDiesel system, as represented through advertisements and representations made by
16 FCA and its authorized dealers. Unknown to Plaintiff at the time the vehicle was leased, it only
17 achieved its promised fuel economy and performance because it was equipped with an emissions
18 system that, during normal driving conditions, emitted many multiples of the allowed level of
19 pollutants such as NOx. FCA’s unfair, unlawful, and deceptive conduct in designing, manufacturing,
20 marketing, selling, and leasing the vehicle without proper emission controls has caused Plaintiff out-
21 of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA knew about, or
22 recklessly disregarded, the inadequate emission controls during normal driving conditions, but did
23 not disclose such facts or their effects to Plaintiff, so Plaintiff leased his vehicle on the reasonable,
24 but mistaken, belief that his vehicle was a “clean diesel,” complied with U.S. emissions standards,
25 was properly EPA-certified, and would retain all of its promised fuel economy and performance
26 throughout its useful life.

1 **6. Oregon Plaintiff**

2 29. Plaintiff Jeff Scholz (for the purpose of this paragraph, “Plaintiff”) is a citizen of
3 Oregon domiciled in Terrebonne, Oregon. On or about September 23, 2015, Plaintiff purchased a
4 2015 Ram 1500 EcoDiesel (for the purpose of this paragraph, the “Affected Vehicle”) from Smolich
5 Motors, an authorized FCA dealership in Bend, Oregon. Plaintiff purchased, and still owns, this
6 vehicle. Plaintiff conducted extensive research regarding the Affected Vehicle’s emissions system
7 by reading the Ram website. He specifically recalls reading about the high fuel mileage, towing
8 capacity, and the overall performance of the vehicle. None of the advertisements reviewed or
9 representations received by Plaintiff contained any disclosure relating to the unlawfully high
10 emissions. Had FCA disclosed this design, and the fact that the Ram 1500 EcoDiesel actually
11 emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle. Plaintiff
12 selected and ultimately purchased his vehicle because of the EcoDiesel system, as represented
13 through advertisements and representations made by FCA and its authorized dealers. Unknown to
14 Plaintiff at the time the vehicle was purchased, it only achieved its promised fuel economy and
15 performance because it was equipped with an emissions system that, during normal driving
16 conditions, emitted many multiples of the allowed level of pollutants such as NOx. FCA’s unfair,
17 unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the
18 vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted
19 repairs, and diminished value of his vehicle. FCA knew about, or recklessly disregarded, the
20 inadequate emission controls during normal driving conditions, but did not disclose such facts or
21 their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that
22 his vehicle was a “clean diesel,” complied with U.S. emissions standards, was properly EPA-
23 certified, and would retain all of its promised fuel economy and performance throughout its useful
24 life.

25 **7. Washington & North Dakota Plaintiff**

26 30. Plaintiff Andrew Loescher (for the purpose of this paragraph, “Plaintiff”) is a citizen
27 of Washington domiciled in Vancouver, Washington. On or about December 28, 2016, Plaintiff
28 purchased a 2015 Ram 1500 EcoDiesel Bighorn Edition (for the purpose of this paragraph, the

“Affected Vehicle”) from Marketplace Motors in Devils Lake, North Dakota. Plaintiff purchased, and still owns, this vehicle. Plaintiff conducted extensive research regarding the Affected Vehicle’s emissions system by reading the Ram website. He specifically recalls reading about the high gas mileage, the low emissions, and the overall performance of the vehicle. None of the advertisements reviewed or representations received by Plaintiff contained any disclosure relating to the unlawfully high emissions. Had FCA disclosed this design, and the fact that the Ram 1500 EcoDiesel actually emitted unlawfully high levels of pollutants, Plaintiff would not have purchased the vehicle. Plaintiff selected and ultimately purchased his vehicle over the Chevy Colorado because of the EcoDiesel system, as represented through advertisements and representations made by FCA and its authorized dealers. Unknown to Plaintiff at the time the vehicle was purchased, it only achieved its promised fuel economy and performance because it was equipped with an emissions system that, during normal driving conditions, emitted many multiples of the allowed level of pollutants such as NOx. FCA’s unfair, unlawful, and deceptive conduct in designing, manufacturing, marketing, selling, and leasing the vehicle without proper emission controls has caused Plaintiff out-of-pocket loss, future attempted repairs, and diminished value of his vehicle. FCA knew about, or recklessly disregarded, the inadequate emission controls during normal driving conditions, but did not disclose such facts or their effects to Plaintiff, so Plaintiff purchased his vehicle on the reasonable, but mistaken, belief that his vehicle was a “clean diesel,” complied with U.S. emissions standards, was properly EPA-certified, and would retain all of its promised fuel economy and performance throughout its useful life.

B. Defendants

1. FCA US LLC

31. FCA US LLC (“FCA”) is a limited liability company organized and existing under the laws of the State of Delaware, and is wholly owned by holding company Fiat Chrysler Automobiles N.V., a Dutch corporation headquartered in London, United Kingdom. FCA’s principal place of business and headquarters is in Auburn Hills, Michigan.

32. FCA is a motor vehicle manufacturer and a licensed distributor of new, previously untitled Chrysler, Dodge, Jeep, and Ram brand motor vehicles. FCA’s Chrysler brand is one of the

1 “Big Three” American automobile brands. FCA engages in commerce by distributing and selling
2 new and unused passenger cars and motor vehicles under its Chrysler, Dodge, Jeep, and Ram brands.
3 Other major divisions of FCA include Mopar, its automotive parts and accessories division, and
4 SRT, its performance automobile division. As of 2015, FCA is the seventh largest automaker in the
5 world by unit production.

6 33. FCA, through its various entities, designs, manufactures, markets, distributes, and
7 sells automobiles in California and multiple other locations in the U.S. and worldwide. FCA and/or
8 its agents designed, manufactured, and installed the EcoDiesel engine systems in the Affected
9 Vehicles. FCA also developed and disseminated the owner’s manuals and warranty booklets,
10 advertisements, and other promotional materials relating to the Affected Vehicles.

11 **2. The Bosch Defendants**

12 34. From at least 2005 to 2015, Robert Bosch GmbH, Robert Bosch LLC, and currently
13 unnamed Bosch employees (together, “Bosch”) were knowing and active participants in the creation,
14 development, marketing, and sale of illegal defeat devices specifically designed to evade U.S.
15 emissions requirements in vehicles sold solely in the United States. These vehicles include the
16 Dodge Ram 1500 EcoDiesel and Jeep Grand Cherokee EcoDiesel, as well as diesels made by
17 Volkswagen, Audi, Porsche, and Mercedes. Bosch participated not just in the development of the
18 defeat device, but in the scheme to prevent U.S. regulators from uncovering the device’s true
19 functionality. Moreover, Bosch’s participation was not limited to engineering the defeat device (in a
20 collaboration described as unusually close). Rather, Bosch marketed “Clean Diesel” in the United
21 States and lobbied U.S. regulators to approve “Clean Diesel,” another highly unusual activity for a
22 mere supplier. These lobbying efforts, taken together with evidence of Bosch’s actual knowledge
23 that the “akustikfunction” operated as a defeat device, and participation in concealing the true
24 functionality of the device from U.S. regulators, can be interpreted only one way under U.S. law:
25 Bosch was a knowing and active participant in a massive, decade-long conspiracy with Volkswagen,
26 FCA, and others to defraud U.S. consumers, regulators, and diesel car purchasers or lessees.

27 35. Robert Bosch GmbH is a German multinational engineering and electronics company
28 headquartered in Gerlingen, Germany. Robert Bosch GmbH is the parent company of Robert Bosch

1 LLC. Robert Bosch GmbH, directly and/or through its North American subsidiary Robert Bosch
2 LLC, at all material times, designed, manufactured, and supplied elements of the defeat device to
3 Volkswagen for use in the Affected Vehicles. Bosch GmbH is subject to the personal jurisdiction of
4 this Court because it has availed itself of the laws of the United States through its management and
5 control over Bosch, LLC, and over the design, development, manufacture, distribution, testing, and
6 sale of hundreds of thousands of the defeat devices installed in the Affected Vehicles sold or leased
7 in the U.S.

8 36. Robert Bosch LLC is a Delaware limited liability company with its principal place of
9 business located at 38000 Hills Tech Drive, Farmington Hills, Michigan 48331. Robert Bosch LLC
10 is a wholly-owned subsidiary of Robert Bosch GmbH. Robert Bosch LLC, directly and/or in
11 conjunction with its parent Robert Bosch GmbH, at all material times, designed, manufactured, and
12 supplied elements of the defeat device to FCA for use in the Affected Vehicles.

13 37. Both Robert Bosch GmbH and Robert Bosch LLC operate under the umbrella of the
14 Bosch Group, which encompasses some 340 subsidiaries and companies. The Bosch Group is
15 divided into four business sectors: Mobility Solutions (formerly Automotive Technology), Industrial
16 Technology, Consumer Goods, and Energy and Building Technology. The Mobility Solutions
17 sector, which supplies parts to the automotive industry, and its Diesel Systems division, which
18 develops, manufactures, and supplies diesel systems, are particularly at issue here and include the
19 relevant individuals at both Bosch GmbH and Bosch LLC. Bosch's sectors and divisions are
20 grouped not by location, but by subject matter. Mobility Solutions includes the relevant individuals
21 at both Bosch GmbH and Bosch LLC. Regardless of whether an individual works for Bosch in
22 Germany or the U.S., the individual holds him or herself out as working for Bosch. This collective
23 identity is captured by Bosch's mission statement: "We are Bosch," a unifying principle that links
24 each entity and person within the Bosch Group.⁶

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26
27 ⁶ Bosch 2014 Annual Report, *Experiencing quality of life*, available at [http://www.bosch.com/
media/com/bosch_group/bosch_in_figures/publications/archive/GB2014_EN.pdf](http://www.bosch.com/media/com/bosch_group/bosch_in_figures/publications/archive/GB2014_EN.pdf) (last accessed Nov.
28 30, 2016).

V. FACTUAL ALLEGATIONS

A. The Environmental Challenges Posed by Diesel Engines and the U.S. Regulatory Response Thereto

38. The U.S. government, through the Environmental Protection Agency (EPA), has passed and enforced laws designed to protect U.S. citizens from pollution and, in particular, certain chemicals and agents known to cause disease in humans. Automobile manufacturers must abide by these laws and must adhere to EPA rules and regulations.

39. The U.S. Clean Air Act has strict emissions standards for vehicles, and it requires vehicle manufacturers to certify to the EPA that the vehicles sold in the U.S. meet applicable federal emissions standards to control air pollution. Every vehicle sold in the U.S. must be covered by an EPA-issued certificate of conformity.

40. There is a very good reason that these laws and regulations exist, particularly in regards to vehicles with diesel engines: In 2012, the World Health Organization declared diesel vehicle emissions to be carcinogenic and about as dangerous as asbestos.

41. Diesel engines pose a particularly difficult challenge to the environment because they have an inherent trade-off between power, fuel efficiency, and emissions: the greater the power and fuel efficiency, the dirtier and more harmful the emissions.

42. Instead of using a spark plug to combust highly refined fuel with short hydrocarbon chains, as gasoline engines do, diesel engines compress a mist of liquid fuel and air to very high temperatures and pressures, which causes the diesel to spontaneously combust. This causes a more powerful compression of the pistons, which produces greater engine torque (that is, more power).

43. The diesel engine is able to do this both because it operates at a higher compression ratio than a gasoline engine and because diesel fuel contains more energy than gasoline.

44. But this greater energy and fuel efficiency comes at a cost: diesel produces dirtier and more dangerous emissions. One byproduct of diesel combustion is oxides of nitrogen (“NOx”), which includes a variety of nitrogen and oxygen chemical compounds that only form at high temperatures.

45. NOx pollution contributes to nitrogen dioxide, particulate matter in the air, and reacts with sunlight in the atmosphere to form ozone. Exposure to these pollutants has been linked with serious health dangers, including asthma attacks and other respiratory illnesses serious enough to send people to the hospital. Ozone and particulate matter exposure have been associated with premature death due to respiratory-related or cardiovascular-related effects. Children, the elderly, and people with pre-existing respiratory illness are at acute risk of health effects from these pollutants.

B. The EcoDiesel Technology

46. Vehicle manufacturers have struggled to produce diesel engines that have high power and strong fuel efficiency but also cleaner emissions. Removing NOx from the untreated exhaust is difficult, and diesel vehicle makers have reacted by trying to remove NOx from vehicles' exhaust using catalysts.

47. FCA's response to the challenge has been the EcoDiesel engine.

48. Emission reductions start in the cylinder with advanced fuel injection strategies. After the byproducts of combustion leave the engine, the EcoDiesel technology treats these emissions using a diesel oxidation catalyst, diesel particulate filter, and selective catalyst reduction.

49. The EcoDiesel approach, when it is operational, results in cleaner emissions without compromising power or fuel economy.

C. FCA Advertised and Promoted EcoDiesel as Clean and EPA-Compliant

50. In order to counter beliefs that diesel engines produce "dirty" emissions and to capitalize on consumers' desire to protect the environment, FCA aggressively markets the EcoDiesel engine as being environmentally friendly, using a leaf and green coloring in its logo:



51. The central theme in FCA's diesel engine marketing is the promise of clean diesel.⁷



52. In its EcoDiesel advertising, FCA specifically targets consumers “who want to drive an efficient, environmentally friendly truck without sacrificing capability or performance.”⁸ Indeed, it claims that the Ram 1500 was “the NAFTA market’s first and only light-duty pickup powered by clean diesel technology.”⁹

53. To convince these consumers, FCA expressly markets the Affected Vehicles as EcoDiesel vehicles, with EPA certifications throughout the U.S., claiming as follows throughout its advertising, specifications, and public-facing statements:

- “Thanks to advanced emissions-control technology ... [EcoDiesel’s] exhaust is ultra-clean, making this engine available in all 50 states.”¹⁰

⁷ Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror... (blog operated by FCA Digital Media) (May 22, 2015), <https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/>.

⁸ *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone (Ram trucks blog operated by FCA US LLC) (July 16, 2013), <https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/>.

⁹ *Chrysler Group’s 3.0-liter EcoDiesel V-6, 500e Battery-Electric Drive System Among Ward’s 10 Best Engines for 2014*, Chrysler Group LLC (FCA) (Dec. 12, 2013), http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2013Dec12.pdf.

¹⁰ *Id.*

- “Equipped with a diesel oxidation catalyst, diesel particulate filter and selective catalyst reduction, the EcoDiesel V6 engine will be emissions-compliant in all 50 states.”¹¹
- “Chrysler Group engineers adapted the engine—manufactured by Fiat-owned V.M. Motori—to meet the NAFTA region’s stringent emissions and on-board diagnostic regulations. The new EcoDiesel V-6 is Tier 2/Bin 5 compliant.”¹²
- The emissions on the EcoDiesel engine data sheet meet Tier2 Bin5 requirements.¹³

54. FCA further claims that “the Bosch emissions control system helps ensure that virtually no particulates and minimal oxides of nitrogen (NOx) exit the tailpipe.”¹⁴

55. And FCA holds itself out as a protector of the environment: “We are in a race against time. Climate change and the increasing scarcity of traditional sources of energy require new approaches to mobility. Fiat Group is addressing this challenge head-on by ensuring individual freedom of movement with maximum consideration for the environment and local communities.”¹⁵ Step one, according to FCA, is to “minimize environmental impacts related to the use of our products.”

D. FCA Advertised and Promoted EcoDiesel as Fuel Efficient

56. FCA promises that the EcoDiesel vehicles provide greater fuel economy, “30% better than a comparable gasoline engine.” According to FCA, “a Jeep Grand Cherokee or Ram 1500 with

¹¹ *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone (Ram trucks blog operated by FCA US LLC) (July 16, 2013), <https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/>.

¹² *Chrysler Group’s 3.0-liter EcoDiesel V-6, 500e Battery-Electric Drive System Among Ward’s 10 Best Engines for 2014*, Chrysler Group LLC (FCA) (Dec. 12, 2013), http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2013Dec12.pdf.

¹³ Specification Sheet, available at http://www.vmmotori.com/images/data_sheet/L630_DOHC-NEW.pdf (last accessed Nov. 30, 2016).

¹⁴ Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror... (blog operated by FCA Digital Media) (May 22, 2015), <https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/>.

¹⁵ Fiat Chrysler’s 2014 Sustainability Report at 4, available at <http://www.fcanorthamerica.com/company/sustainability/Documents/Fiat%20Chrysler%20Sustainability%20Brochure%202014.pdf>.

1 the EcoDiesel V-6 has a driving range of about 730 miles on one tank of fuel. That's more than
2 enough range to make the drive from Detroit to Traverse City and back without a refueling stop.”¹⁶

3 57. FCA's website claims that “[t]he 3.0-liter V-6 EcoDiesel engine available on the Jeep
4 Grand Cherokee and Ram 1500 pickup has been listed among Ward's '10 Best Engines' for three
5 consecutive years. On the Ram 1500, the engine delivers the highest fuel economy among all full-
6 size truck competitors – 12% higher than the next-closest competitor. On the Jeep Grand Cherokee,
7 it offers fuel economy of 30 miles per gallon highway with a driving range of more than 730
8 miles.”¹⁷

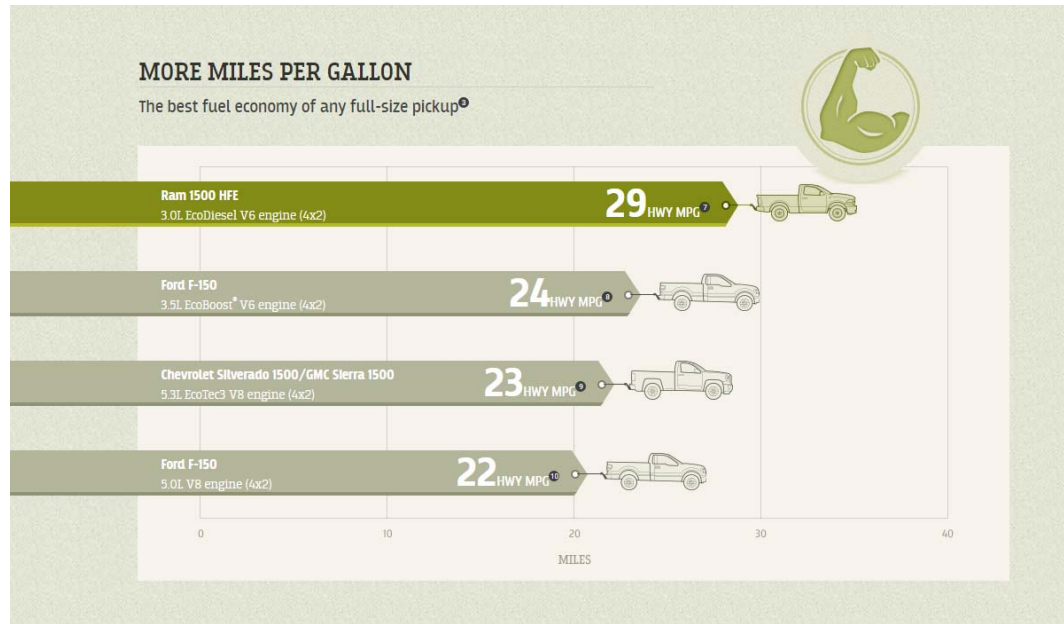
9 58. FCA further claims that the 2014 Ram 1500 “exceeds the EPA highway rating for the
10 top-ranked small pickup. The breakthrough results mean Ram keeps the half-ton fuel-economy
11 record set last year by the 2013 Ram 1500.”

12 59. A chart on FCA's website claims that Ram 1500 has the “best fuel economy of any
13 full-size pick-up:”¹⁸

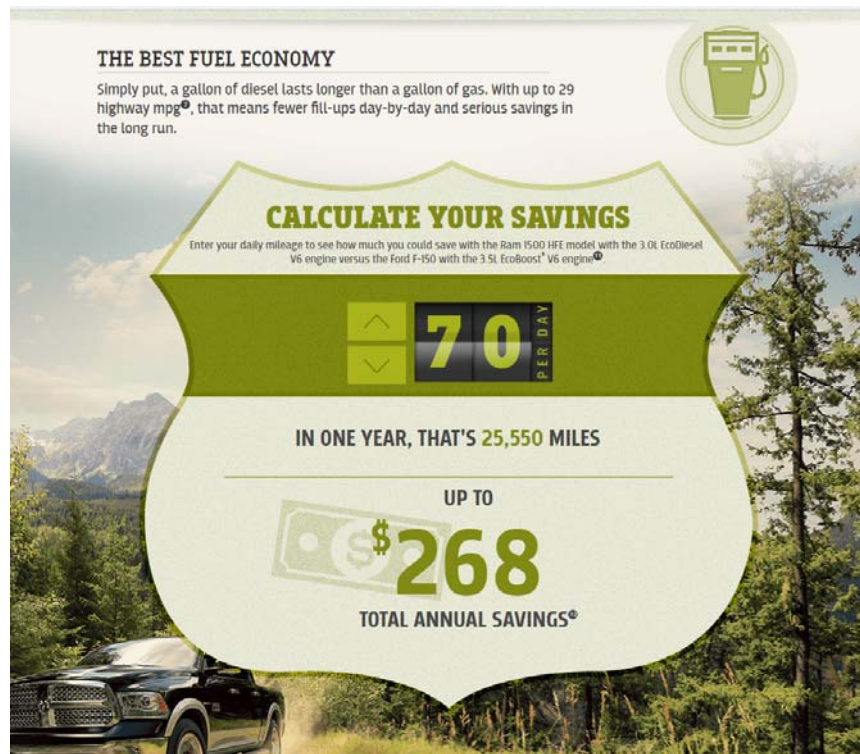
24 ¹⁶ Dale Jewett, *EcoDiesel: An Essential Tool for Every Outdoorsman*, Objects in the Mirror...
25 (blog operated by FCA Digital Media) (May 22, 2015), <https://blog.fcanorthamerica.com/2015/05/22/ecodiesel-an-essential-tool-for-every-outdoorsman/>.

26 ¹⁷ *Fuel Efficiency*, FCA US LLC, [http://www.fcanorthamerica.com/Innovation/Pages/Fuel-](http://www.fcanorthamerica.com/Innovation/Pages/Fuel-Efficiency2.aspx)
27 [Efficiency2.aspx](http://www.fcanorthamerica.com/Innovation/Pages/Fuel-Efficiency2.aspx) (last accessed Nov. 30, 2016).

28 ¹⁸ *EcoDiesel – Ram 1500 HFE*, Ram Trucks (FCA), <http://www.ramtrucks.com/en/ecodiesel/#>
(last accessed Nov. 30, 2016).



60. And FCA offers prospective Ram 1500 buyers a calculator to determine how much money they can save with “fewer fill-ups day-by-day”:¹⁹

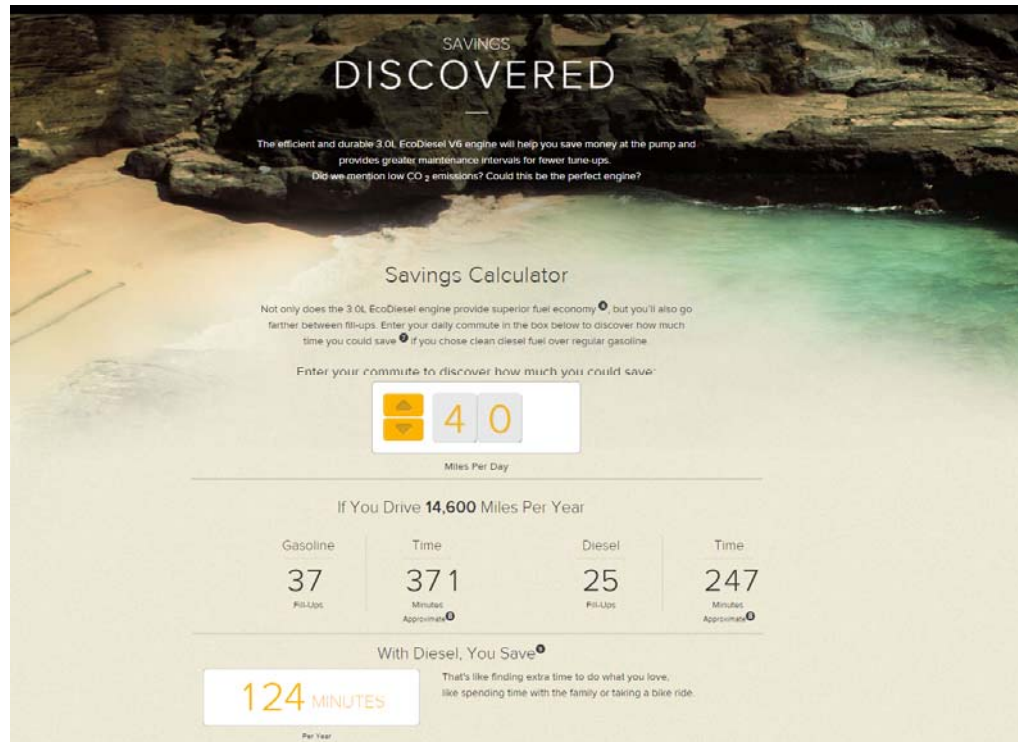


61. FCA’s advertising has been effective. According to one press release, “[i]t’s every truck manufacturer’s dream to have this kind of initial order demand for a product. Fuel economy is

¹⁹ *Id.*

the No. 1 request of half-ton buyers and the Ram 1500 EcoDiesel delivers without compromising capability.”²⁰

62. FCA’s Jeep Grand Cherokee advertising is similarly deceptive, claiming that diesel technology reduces the number of fill-ups:²¹



63. FCA further claims that the EcoDiesel fuel efficiency equips the Jeep Grand Cherokee “with an incredible 730-mile highway driving range, you can find hundreds of miles of discovered roads and be confident you’ll find your way back.”²²

64. Without cheating emissions, FCA could not achieve the fuel economy and range that it promises. Moreover, when and if FCA recalls the Affected Vehicles and degrades the EcoDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not obtain the

²⁰ 2014 Ram 1500 EcoDiesel Orders Top More Than 8,000 Units in Three Days, Filling Initial Allocation, Chrysler Group LLC (FCA) (Feb. 19, 2014), http://www.fcanorthamerica.com/News/ChryslerDocuments/ChryslerGroupLLC_Sustain2014Feb19.pdf.

²¹ EcoDiesel, Jeep (FCA), <http://www.jeep.com/en/jeep-capabilities/eco-diesel-calculator/> (last accessed Nov. 30, 2016).

²² *Id.*

performance characteristics of their vehicles when purchased. And Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in performance and efficiency and increased wear on their vehicles' engines.

E. FCA Advertised and Promoted EcoDiesel as Powerful

65. Another major concern for consumers of trucks and SUVs is power, including torque and towing capacity. FCA claims that the 2015 Jeep Grand Cherokee equipped with a 3.0-liter EcoDiesel V6 engine has best-in-class towing capability of up to 7,400 pounds.²³

66. FCA also claims that the EcoDiesel engine has best-in-class torque: "The EcoDiesel engine delivers best-in-class 420 lb-ft of torque. Paired with an impressive 240 horsepower, this engine has serious muscle."²⁴

67. Without cheating emissions, FCA could not achieve the power and performance that it boasts about. Moreover, when and if FCA recalls the Affected Vehicles and degrades the EcoDiesel engine performance in order to make the Affected Vehicles compliant with EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and will not retain the towing capacity advertised. And Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in performance and increased wear on their vehicles' engine.

F. Worldwide Diesel Emissions Cheating

68. As noted, the world was shocked to learn that Volkswagen had manufactured over 11 million cars that were on the road in violation of European emissions standards, and over 480,000 vehicles were operating in the U.S. in violation of EPA and state standards. But Volkswagen was not the only manufacturer of vehicles that exceeded emissions standards.

69. In the wake of the major scandal involving Volkswagen and Audi diesel vehicles evading emissions standards with the help of certain software that manipulates emissions controls

²³ *Id.*

²⁴ *The 2014 Ram 1500 with EcoDiesel Engine, Available Soon at a Dealer Near You*, Ram Zone (Ram trucks blog operated by FCA US LLC) (July 16, 2013), <https://blog.ramtrucks.com/features/the-2014-ram-1500-with-ecodiesel-engine-available-soon-at-a-dealer-near-you/>.

(called “defeat devices”),²⁵ scientific literature and reports and testing indicate that most of the diesel vehicle manufactures of so-called “Clean Diesel” vehicles emit far more pollution on the road than in lab tests. The EPA has widened its probe of auto emissions to include, for example, the Mercedes E250 BlueTEC.

70. In May 2015, a study conducted on behalf of the Dutch Ministry of Infrastructure and the Environment found that all sixteen vehicles made by a variety of manufacturers, when tested, emitted significantly more NOx on real-world trips while they passed laboratory tests. The report concluded that “[i]n most circumstances arising in normal situations on the road, the system scarcely succeeded in any effective reduction of NOx emissions.”²⁶

71. The report further remarked:²⁷

It is remarkable that the NOx emission under real-world conditions exceeds the type approval value by [so much]. It demonstrates that the settings of the engine, the EGR and the SCR during a real-world test trip are such that they do not result in low NOx emissions in practice. In other words: ***In most circumstances arising in normal situations on the road, the systems scarcely succeed in any effective reduction of NOx emissions.***

The lack of any “effective reduction of NOx emissions” is a complete contradiction of FCA’s claim that its vehicles are clean.

72. Other organizations are beginning to take notice of the emissions deception. The Transportation and Environment (T&E) organization, a European group aimed at promoting sustainable transportation, compiled data from “respected testing authorities around Europe.” T&E stated in September 2015 that real-world emissions testing showed drastic differences from

²⁵ EPA’s Sept. 18, 2015 Notice of Violation (“NOV”) to Volkswagen Group of America, Inc., available at <https://www.epa.gov/sites/production/files/2015-10/documents/vw-nov-caa-09-18-15.pdf>. As detailed in the NOV, software in Volkswagen and Audi diesel vehicles detects when the vehicle is undergoing official emissions testing and turns full emissions controls on only during the test. But otherwise, while the vehicle is running, the emissions controls are suppressed. This results in cars that meet emissions standards in the laboratory or at the state testing station, but during normal operation they emit NOx at up to 40 times the standard allowed under U.S. laws and regulations. Volkswagen has admitted to installing a defeat device in its diesel vehicles.

²⁶ *Detailed investigations and real-world emission performance of Euro 6 diesel passenger cars*, TNO (May 18, 2015), <http://publications.tno.nl/publication/34616868/a1Ug1a/TNO-2015-R10702.pdf>.

²⁷ *Id.* at 6 (emphasis added).

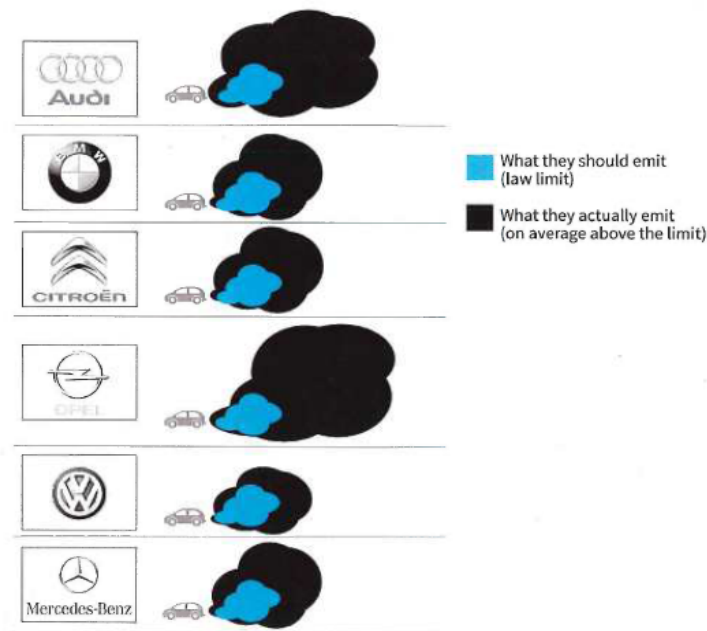
laboratory tests such that models tested emitted more pollutants on the road than in their laboratory tests. “For virtually every new model that comes onto the market the gap between test and real-world performance leaps,” the report asserts.²⁸

73. In a summary report, T&E graphically depicted the widespread failure of most manufacturers:²⁹

2. The problem is endemic across the car industry – but the performance of individual models and manufacturers varies widely

In tests by the ICCT¹ 12 out of 13 modern diesel cars failed to achieve the Euro 6 limit in on the road. The worst vehicle, an Audi, emitted 22 times the allowed limit. Emissions are highest in urban areas where most people are exposed to the pollution. On average a new diesel car emits **over** 800mg/km of nitrogen oxides driving in town compared to the limit of 80mg/km. Data obtained on around 20 modern diesel cars by T&E shows every major manufacturer is selling cars that fail to meet Euro 6 limits on the road. A minority of vehicles do meet the limits – but most don’t. This is because the industry uses cheaper less effective exhaust treatment systems or fails to configure the best systems in a way that minimizes emissions. The cost of a modern diesel after treatment system is just €300.

Above and beyond the safe limit



Source: T&E

Transport & Environment

²⁸ VW’s cheating is just the tip of the iceberg, Transport & Environment (Sept. 21, 2015), <http://www.transportenvironment.org/publications/vw%E2%80%99s-cheating-just-tip-iceberg>.

²⁹ Five facts about diesel the car industry would rather not tell you, Transport & Environment (Sept. 2015), http://www.transportenvironment.org/sites/te/files/publications/2015_09_Five_facts_about_diesel_FINAL.pdf.

74. The T&E report found that the current system for testing cars in a laboratory produces “meaningless results.”³⁰

75. Emissions Analytics is a U.K. company which says that it was formed to “overcome the challenge of finding accurate fuel consumption and emissions figures for road vehicles.” With regard to its recent on-road emissions testing, the company explains:³¹

[I]n the European market, we have found that real-world emissions of the regulated nitrogen oxides are four times above the official level, determined in the laboratory. Real-world emissions of carbon dioxide are almost one-third above that suggested by official figures. For car buyers, this means that fuel economy on average is one quarter worse than advertised. This matters, even if no illegal activity is found.

G. Defendants’ Dirty “Cheat Device” Scheme

76. All modern engines are integrated with sophisticated computer components to manage the vehicle’s operation, such as an electronic diesel control (“EDC”). Bosch tested, manufactured, and sold the EDC system used by Volkswagen, Mercedes, and FCA in the Affected Vehicles. This system is more formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17” or “ED17”). Upon its introduction, EDC Unit 17 was publicly-touted by Bosch as follows:³²

EDC17 ... controls every parameter that is important for effective, low-emission combustion.

Because the computing power and functional scope of the new EDC17 can be adapted to match particular requirements, it can be used very flexibly in any vehicle segment on all the world’s markets. In addition to controlling the precise timing and quantity of injection, exhaust gas recirculation, and manifold pressure regulation, it also offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides. The Bosch EDC17 determines the injection parameters for each cylinder, making specific adaptations if necessary. This improves the precision of injection throughout the vehicle’s entire service life. The system therefore makes an important contribution to observing future exhaust gas emission limits.

³⁰ *Id.*

³¹ Emissions Analytics Press Release (Sept. 28, 2015), available at <http://www.abvwc.com/home/emissions-analytics>.

³² See Bosch Press Release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en>.

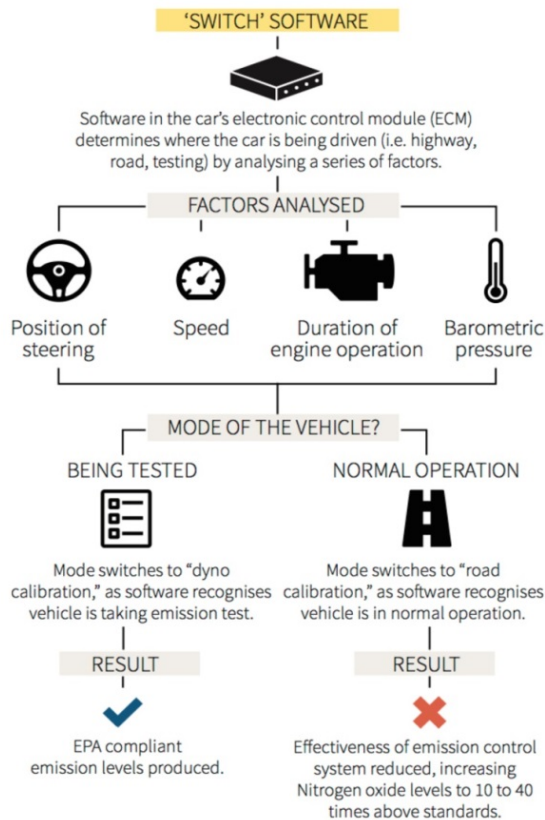
77. Bosch worked with each vehicle manufacturer that utilized EDC Unit 17 to create a unique set of specifications and software code to manage the vehicles' engine operation.

78. With respect to the Affected Vehicles, however, EDC Unit 17 was also enabled by Bosch and FCA to surreptitiously evade emissions regulations. Bosch and FCA worked together to develop and implement a specific set of software algorithms for implementation in the Affected Vehicles, which enabled FCA to adjust fuel levels, exhaust gas recirculation, air pressure levels, and even urea injection rates (for applicable vehicles).³³ When carmakers test their vehicles against EPA emission standards, they place their cars on dynamometers (large rollers) and then perform a series of specific maneuvers prescribed by federal regulations. Bosch's EDC Unit 17 gave Volkswagen, FCA, and other manufacturers the power to detect test scenarios by monitoring vehicle speed, acceleration, engine operation, air pressure, and even the position of the steering wheel. When the EDC Unit 17's detection algorithm detected that the vehicle was on a dynamometer (and undergoing an emission test), additional software code within the EDC Unit 17 downgraded the engine's power and performance and upgraded the emissions control systems' performance by switching to a "dyno calibration" to cause a subsequent reduction in emissions to legal levels. Once the EDC Unit 17 detected that the emission test was complete, the EDC Unit 17 would then enable a different "road calibration" that caused the engine to return to full power while reducing the emissions control systems' performance, and consequently caused the vehicle to spew the full amount of illegal NOx emissions out on the road.³⁴ This process is illustrated in the following diagram, applicable to FCA as well:

³³ See, e.g., *Engine management*, Bosch Auto Parts, http://de.bosch-automotive.com/en/parts_and_accessories/motor_and_sytems/diesel/engine_management_2/engine_control_unit_1 (last accessed Nov. 30, 2016).

³⁴ Russell Hotten, *Volkswagen: The scandal explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

How Volkswagen's defeat device works



Source: U.S. Environmental Protection Agency
J. Wang, 22/09/2015

REUTERS

79. This workaround was illegal. The Clean Air Act expressly prohibits defeat devices, defined as any auxiliary emission control device “that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use.” 40 C.F.R. § 86.1803-01; *see also id.* § 86.1809-10 (“No new light-duty vehicle, light-duty truck, medium-duty passenger vehicle, or complete heavy-duty vehicle shall be equipped with a defeat device.”). Moreover, the Clean Air Act prohibits the sale of components used as defeat devices, “where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.” 42 U.S.C. § 7522(a)(3). Finally, in order to obtain a certificate of compliance (“COC”), automakers must submit an application, which lists all auxiliary emission control devices installed in the vehicle, a justification for each, and an explanation of why the control device is not a defeat device.

1 80. Thus, in order to obtain the COCs necessary to sell their vehicles, FCA did not
 2 disclose, and affirmatively concealed, the presence of the test-detecting and performance-altering
 3 software code that it developed with Bosch from government regulators, thus making that software
 4 an illegal defeat device. In other words, FCA lied to the government, its customers, its dealers, and
 5 the public at large.

6 81. Because the COCs were fraudulently obtained, and because the Affected Vehicles did
 7 not conform “in all material respects” to the specifications provided in the COC applications, the
 8 Affected Vehicles were never covered by a valid COC, and thus were never legal for sale, nor were
 9 they EPA and/or CARB compliant, as represented. FCA and Bosch hid these facts from the EPA,
 10 CARB and other regulators, its dealers, and consumers, and it continued to sell and lease the
 11 Affected Vehicles to the driving public, despite their illegality, and with the complicity of Bosch.

12 82. FCA’s illegal workaround was enabled by its close partnership with Bosch, which
 13 enjoyed a sizable portion of its annual revenue from manufacturing parts used in FCA’s and other
 14 manufacturers’ diesel vehicles.³⁵ Bosch was well aware that FCA was using its emissions control
 15 components as a defeat device and, in fact, worked with FCA to develop the software algorithm
 16 specifically tailored for the Affected Vehicles.

17 83. Because the COCs were fraudulently obtained, the Affected Vehicles were never
 18 covered by valid COCs, and thus were never offered legally for sale. FCA hid these facts from the
 19 EPA, CARB and other state regulators, and consumers, and it continued to sell and lease the
 20 Affected Vehicles despite their illegality, and with the complicity of Bosch.

21 **H. Bosch Played a Critical Role in the Defeat Device Scheme**

22 84. Although this case is not about Volkswagen, Bosch’s history with Volkswagen
 23 provides background and support for its participation in the RICO enterprise alleged herein, of which
 24 Bosch and FCA were participants.

25
 26 ³⁵ Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel technology
 27 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See*
 28 *Bosch probes whether its staff helped VW’s emissions rigging*, Automotive News (Jan. 27, 2016),
<http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging>.

1 **1. Volkswagen and Bosch conspire to develop the illegal defeat device.**

2 85. Bosch tightly controlled development of the control units in the Affected Vehicles and
3 actively participated in the development of the defeat device.

4 86. As discussed above, Bosch introduced a new generation of diesel ECUs for
5 Volkswagen.

6 87. A February 28, 2006 Bosch press release introduced the “New Bosch EDC17 engine
7 management system” as the “brain of diesel injection” which “controls every parameter that is
8 important for effective, low-emission combustion.” The EDC17 offered “[e]ffective control of
9 combustion” and a “[c]oncept tailored for all vehicle classes and markets.” In the press release,
10 Bosch touted the EDC17 as follows:³⁶

11 **EDC17: Ready for future demands**

12 Because the computing power and functional scope of the new EDC17
13 can be adapted to match particular requirements, it can be used very
14 flexibly in any vehicle segment on all the world’s markets. In addition
15 to controlling the precise timing and quantity of injection, exhaust gas
16 recirculation, and manifold pressure regulation, it also offers a large
17 number of options such as the control of particulate filters or systems
18 for reducing nitrogen oxides. The Bosch EDC17 determines the
19 injection parameters for each cylinder, making specific adaptations if
20 necessary. This improves the precision of injection throughout the
21 vehicle’s entire service life. The system therefore makes an important
22 contribution to observing future exhaust gas emission limits.

23 88. Bosch and Volkswagen worked together closely to modify the software and to create
24 specifications for each vehicle model. Indeed, customizing a road-ready ECU is an intensive three-
25 to five-year endeavor involving a full-time Bosch presence at an automaker’s facility.

26 89. All Bosch ECUs, including the EDC17, run on complex, highly proprietary engine
27 management software over which Bosch exerts near-total control. In fact, the software is typically
28 locked to prevent customers, like Volkswagen and FCA, from making significant changes on their
own.

 90. Bosch’s security measures further confirm that its customers cannot make significant
changes to Bosch software without Bosch involvement. Bosch boasts that its security modules

³⁶ See Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management system* (Feb. 28, 2006), <http://www.bosch-resse.de/presseforum/details.htm?txtID=2603&locale=en>.

1 protect vehicle systems against unauthorized access in every operating phase, meaning that no
 2 alteration could have been made without either a breach of that security—and no such claims have
 3 been advanced—or Bosch’s knowing participation.³⁷

4 91. Unsurprisingly, then, at least one car company engineer has confirmed that Bosch
 5 maintains absolute control over its software as part of its regular business practices:³⁸

6 I’ve had many arguments with Bosch, and they certainly own the
 7 dataset software and let their customers tune the curves. Before each
 8 dataset is released it goes back to Bosch for its own validation.

9 Bosch is involved in all the development we ever do. They insist on
 10 being present at all our physical tests and they log all their own data, so
 11 someone somewhere at Bosch will have known what was going on.

12 All software routines have to go through the software verification of
 13 Bosch, and they have hundreds of milestones of verification, that’s the
 14 structure

15 The car company is *never* entitled by Bosch to do something on their
 16 own.

17 Thus, Bosch cannot convincingly argue that the development of the “akustik” device was the work of
 18 a small group of rogue engineers.

19 92. In fact, Volkswagen’s and Bosch’s work on the EDC17 reflected a highly unusual
 20 degree of coordination. It was a massive project that required the work of numerous Bosch coders
 21 for a period of more than ten years, or perhaps more.³⁹ Although Bosch publicly introduced the
 22 EDC17 in 2006, it had started to develop the engine management system years before.⁴⁰

23 ³⁷ *Reliable Protection for ECUs*, ESCRYPT (May 12, 2016), [https://www.escrypt.com/company/
 24 single-news/detail/reliable-protection-for-ecus/](https://www.escrypt.com/company/single-news/detail/reliable-protection-for-ecus/).

25 ³⁸ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
 26 (Nov. 23, 2015), [http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-
 27 software/](http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software/).

28 ³⁹ Approximately 50,000 of Bosch’s 375,000 employees worked in the diesel technology
 operations branch of Bosch, and Volkswagen was the biggest diesel manufacturer in the world. *See
 Bosch Probes Whether Its Staff Helped VW’s Emissions Rigging*, Automotive News (Jan. 27, 2016),
[http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-
 helped-vws-emissions-rigging](http://www.autonews.com/article/20160127/COPY01/301279955/bosch-probes-whether-its-staff-helped-vws-emissions-rigging).

⁴⁰ Bosch press release, *The brain of diesel injection: New Bosch EDC17 engine management
 system* (Feb. 28, 2006), [http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&
 locale=en](http://www.bosch-presse.de/presseforum/details.htm?txtID=2603&locale=en).

93. In fact, Bosch was in on the secret and knew that Volkswagen was using Bosch's software algorithm as an "on/off" switch for emission controls when the affected vehicle was undergoing testing. As noted above, it has been said the decision to cheat was an "open secret" at Volkswagen.⁴¹ It was an "open secret" at Bosch as well.

94. Volkswagen and Bosch personnel employed code language for the defeat device, referring to it as the "acoustic function" (in German, "akustikfunktion"). As described above, the roots of the "akustikfunktion"—and likely the cheating—can be traced back to the late 1990s when Audi devised software called the "akustikfunktion" that could switch off certain functions when the vehicle was in a test mode.⁴² The "akustik" term is derived from the function's ability to modify the noise and vibration produced by the engine. News articles report that, in 2006, Volkswagen AG further developed this "akustikfunktion" for the Affected Vehicles.⁴³

95. In sum, Bosch worked hand-in-glove with Volkswagen to develop and maintain the akustikfunktion/defeat device. On information and belief, it did so with FCA as well.

2. Volkswagen and Bosch conspire to conceal the illegal "akustikfunktion."

96. By 2007, and likely earlier, Bosch was critical not only in developing the "akustikfunktion," but also in concealing it.

⁴¹ Georgina Prodham, *Volkswagen probe finds manipulation was open secret in department*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. See also Jay Ramey, *VW chairman Poetsch: Company 'tolerated breaches of rules'*, Autoweek (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules> (it was necessary for the "EA 189 engine to pass U.S. diesel emissions limits within the budget and time frame allotted").

⁴² Martin Murphy, *Dieselgate's Roots Stretch Back to Audi*, Handelsblatt Global (Apr. 19, 2016), <https://global.handelsblatt.com/edition/413/ressort/companies-markets/article/dieselgates-roots-stretch-back-to-audi?ref=MTI5ODU1>.

⁴³ *Volkswagen Probe Finds Manipulation Was Open Secret in Department: Newspaper*, Reuters (Jan. 23, 2016), <http://www.reuters.com/article/us-volkswagen-emissions-investigation-idUSKCN0V02E7>. Volkswagen Group Chairman, Hans Dieter Poetsch, explained that a small group of engineers and managers was involved in the creation of the manipulating software. See *VW Chairman Poetsch: Company 'Tolerated Breaches of Rules'*, Auto Week (Dec. 10, 2015), <http://autoweek.com/article/vw-diesel-scandal/vw-chairman-poetsch-company-tolerated-breaches-rules>. See also *Scandal Explained*, BBC (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>; Sept. 18, 2015, <http://www.autocar.co.uk/car-news/industry/vw-emissions-scandal-how-volkswagens-defeat-device-works>.

97. Bosch was concerned about getting caught participating in the defeat device fraud. As reported in the German newspaper, *Bild am Sonntag*, and a French publication, a Volkswagen internal inquiry found that in 2007, Bosch warned Volkswagen by letter that using the emissions-altering software in production vehicles would constitute an “offense.”⁴⁴

3. Volkswagen and Bosch conspire in the U.S. and Germany to elude U.S. regulators who regulated not just Volkswagen diesels, but all diesels.

98. The purpose of the defeat device was to evade stringent U.S. emissions standards. Once Bosch and Volkswagen perfected the defeat device, therefore, their attention turned to deceiving U.S. regulators.

99. Bosch’s North American subsidiary, Defendant Bosch LLC, was also part of and essential to the fraud. Bosch LLC worked closely with Bosch GmbH and Volkswagen, in the United States and in Germany, to ensure that the non-compliant Affected Vehicles passed U.S. emission tests. Bosch LLC employees frequently communicated with U.S. regulators, and actively worked to ensure the Affected Vehicles were approved by regulators.

100. Employees of Bosch LLC, Bosch GmbH, and IAV provided specific information to U.S. regulators about how Volkswagen’s vehicles functioned and unambiguously stated that the vehicles met emissions standards. Bosch LLC regularly communicated to its colleagues and clients in Germany about ways to deflect and diffuse questions from U.S. regulators about the Affected Vehicles—particularly CARB.

4. Bosch keeps Volkswagen’s secret safe and pushes “clean” diesel in the U.S.

101. Bosch not only kept Volkswagen’s dirty secret safe, it went a step further and actively lobbied lawmakers to push “Clean Diesel” in the U.S., including making Affected Vehicles available for regulators to drive.

⁴⁴ *Bosch warned VW about illegal software use in diesel cars, report says*, Automotive News (Sept. 27, 2015), <http://www.autonews.com/article/20150927/COPY01/309279989/bosch-warned-vw-about-illegal-software-use-in-diesel-cars-report-says>; *VW Scandal: Company Warned over Test Cheating Years Ago*, BBC (Sept. 27, 2015), <http://www.bbc.com/news/business-34373637>.

102. As early as 2004, Bosch announced a push to convince U.S. automakers that its diesel technology could meet tougher 2007 U.S. emission standards.⁴⁵ Its efforts ended up being a multiple-year, multi-million dollar effort involving key players from both Bosch in Germany and Bosch in the U.S.

103. Bosch's promotion of diesel technology specifically targeted the U.S. For example, Bosch put on "Diesel Days in California"⁴⁶ and "SAE World Congress in Detroit."⁴⁷ In 2008, Bosch LLC and Volkswagen Group of America, Inc. co-sponsored the "Future Motion Made in Germany-Second Symposium on Modern Drive Technologies" at the German Embassy in Washington, D.C., with the aim of providing a venue for "stakeholders to gain insight into the latest technology trends, and to engage in a vital dialogue with industry leaders and policymakers."⁴⁸

104. Bosch LLC hosted multi-day conferences open to many regulators and legislators and held private meetings with regulators, in which it proclaimed extensive knowledge of the specifics of Volkswagen technology, including calibrations necessary for the Affected Vehicles to comply with emissions regulations.

105. For example, in April 2009, Bosch organized and hosted a two-day "California Diesel Days" event in Sacramento, California. Bosch invited a roster of lawmakers, journalists, executives, regulators, and NGOs⁴⁹ with the aim of changing perceptions of diesel from "dirty" to "clean." The

⁴⁵ Edmund Chew, *Bosch boosts US diesel lobbying*, Autonews (Mar. 8, 2004), <http://www.autonews.com/article/20040308/SUB/403080876/bosch-boosts-us-diesel-lobbying>.

⁴⁶ *Bosch drives clean diesel in California*, Bosch, http://www.bosch.us/content/language1/html/734_4066.htm?section=28799C0E86C147799E02226E942307F2 (last accessed Mar. 28, 2017).

⁴⁷ *See, e.g., Bosch Brings Innovation, Green Technology to SAE 2009 World Congress*, Bosch, http://www.bosch.us/content/language1/html/734_7432.htm?section=CDAF31A468D9483198ED8577060384B3 (last accessed Mar. 28, 2017).

⁴⁸ *Bosch: Clean Diesel is Key Part of Future Technology Mix*, Bosch, <http://us.bosch-press.com/tbwebdb/bosch-usa/en-US/PressText.cfm?CFID=59743263&CFTOKEN=b0c61c28412924c-BCBB064E-FD22-FC33-50650318A8803D2B&nh=00&Search=0&id=364> (last accessed Mar. 28, 2017).

⁴⁹ *Bosch drives clean diesel in California*, Bosch, http://www.bosch.us/content/language1/html/734_4066.htm?section=28799C0E86C147799E02226E942307F2 (last accessed Mar. 28, 2017); *see also, California Diesel Days*, The U.S. Coalition for Advanced Diesel Cars, <http://www.californiadieseldays.com/> (last accessed Mar. 28, 2017).

1 event featured Affected Vehicles as ambassadors of “Clean Diesel” technology, including a 2009
 2 Volkswagen Jetta “green car.” The stated goals were to “build support for light-duty diesel as a
 3 viable solution for achieving California’s petroleum and emission reduction objectives.”

4 106. In 2009, Bosch also became a founding member of the U.S. Coalition for Advanced
 5 Diesel Cars.⁵⁰ One of this advocacy group’s purposes included “promoting the energy efficiency and
 6 environmental benefits of advanced clean diesel technology for passenger vehicles in the U.S.
 7 marketplace.”⁵¹ This group lobbies Congress, U.S. regulators, and the California Air Resources
 8 Board in connection with rules affecting “Clean Diesel” technology.⁵²

9 107. In 2010, Bosch sponsored the Virginia International Raceway with the support of the
 10 2010 Volkswagen Jetta TDI Cup Series. This event included TDI vehicles featuring Bosch
 11 technology.⁵³

12 108. In 2012, Audi, BMW, Bosch, Daimler, Porsche, and Volkswagen joined to form The
 13 Clearly Better Diesel initiative.⁵⁴ The initiative was announced in Berlin by the German Association
 14 of the Automotive Industry. Its stated goal was to promote the sale of clean diesel vehicles in the
 15 U.S. The initiative’s slogan was “Clean Diesel. Clearly Better.”

16 109. In its efforts to promote “Clean Diesel,” including the Affected Vehicles, Bosch
 17 GmbH acted on behalf of its global group.

19 ⁵⁰ Chrissie Thompson, *New Coalition Aims To Promote Diesel Cars*, Automotive News (Feb. 2,
 20 2009), <http://www.autonews.com/article/20090202/OEM06/302029728/new-coalition-aims-to-promote-diesel-cars>.

21 ⁵¹ *About the Coalition*, The U.S. Coalition for Advanced Diesel Cars,
 22 <http://cleandieseldelivers.com/about/> (last accessed Mar. 28, 2017).

23 ⁵² *Id. See also, e.g.*, Letter to Mary T. Nichols & the California Air Resources Board concerning
 24 a statement made about diesel technology (Jan. 8, 2016), available at <http://cleandieseldelivers.com/media/Mary-Nichols-Letter-01082016.pdf>.

25 ⁵³ *Volkswagen Jetta TDI Cup Drivers Take to the Track for the First Time in 2010 at VIR*,
 26 Volkswagen of America, Inc. (Apr. 23, 2010), available at <http://www.prnewswire.com/news-releases/volkswagen-jetta-tdi-cup-drivers-take-to-the-track-for-the-first-time-in-2010-at-vir-91985604.html>.

27 ⁵⁴ “Clean Diesel Clearly Better” Campaign for Clean Diesel Cars Welcomed, Diesel
 28 Technology Forum (Dec. 12, 2012), <http://www.dieselforum.org/news/clean-diesel-clearly-better-campaign-for-clean-diesel-cars-welcomed>.

I. The Deception Involving FCA’s “EcoDiesels”

110. On January 12, 2017, the United States Environmental Protection Agency issued a Notice of Violation against Fiat Chrysler Automobiles N.V. and FCA US LLC for failing to justify or disclose defeat devices in model year 2014–2016 Dodge Ram 1500 EcoDiesel and 2014–2016 Jeep Grand Cherokee EcoDiesel vehicles.⁵⁵ The EPA is currently working in coordination with the California Air Resources Board (CARB), which has also issued a notice of violation to FCA.⁵⁶ EPA and CARB have both initiated investigations based on FCA’s alleged actions.

111. The Notice of Violation is based in part on emissions testing performed by the EPA at the National Vehicle and Fuel Emissions Laboratory. The EPA performed this testing “using driving cycles and conditions that may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.”⁵⁷

112. The EPA identified at least eight Auxiliary Emissions Control Devices (AECDs) in the Affected Vehicles:

- AECD 1 (Full EGR Shut-Off at Highway Speed)
- AECD 2 (Reduced EGR with Increasing Vehicle Speed)
- AECD 3 (EGR Shut-off for Exhaust Valve Cleaning)
- AECD 4 (DEF Dosing Disablement during SCR Adaptation)
- AECD 5 (EGR Reduction due to Modeled Engine Temperature)
- AECD 6 (SCR Catalyst Warm-Up Disablement)
- AECD 7 (Alternative SCR Dosing Modes)
- AECD 8 (Use of Load Governor to Delay Ammonia Refill of SCR Catalyst)

113. EPA testing found that “some of these AECDs appear to cause the vehicle to perform differently when the vehicle is being tested for compliance with the EPA emission standards using

⁵⁵ EPA Notice of Violation to FCA (Jan. 12, 2017), <https://www.epa.gov/sites/production/files/2017-01/documents/fca-caa-nov-2017-01-12.pdf>.

⁵⁶ EPA news release, *EPA Notifies Fiat Chrysler of Clean Air Act Violations* (Jan. 12, 2017), <https://www.epa.gov/newsreleases/epa-notifies-fiat-chrysler-clean-air-act-violations>.

⁵⁷ EPA Notice of Violation to FCA (Jan. 12, 2017), <https://www.epa.gov/sites/production/files/2017-01/documents/fca-caa-nov-2017-01-12.pdf>.

the Federal emission test procedure (*e.g.*, FTP, US06) than in normal operation and use.”⁵⁸ For example:

- a. AECD 3, when combined with either AECD 7 or AECD 8, disables the EGR system without increasing the effectiveness of SCR system. Under some normal driving conditions, this disabling reduces the effectiveness of the overall emission control system. The AECD 3 uses a timer to shut off the EGR, which does not appear to the EPA to meet any exceptions to the regulatory definition of “defeat device.”
- b. AECD 5 & 6 together reduce the effectiveness of the NO_x emissions control system, using a timer to discontinue warming of the SCR after-treatment system, which reduces its effectiveness.
- c. AECD 4, particularly when combined with AECD 8, increases emissions of tailpipe NO_x during normal vehicle operation and use. The operation of AECD 1, AECD 2, and/or AECD 5 increase the frequency of occurrence of AECD 4.
- d. AECDs 7 & 8 work together to reduce NO_x emissions during variable-grade and high-load conditions.

114. The EPA further found that FCA did not disclose or justify these control devices in their Certificate of Conformity applications, as required by EPA regulations, and that FCA was therefore in violation of the Clean Air Act each time it sold, offered for sale, introduced in commerce, or imported approximately 103,828 vehicles.

115. Plaintiffs have also tested the 2015 Dodge Ram 1500 pickup using a Portable Emissions Measurement System (“PEMS”). Testing revealed that the Ram 1500 fails to meet U.S. emissions standards, as promised, and fails to meet the “no NO_x” out of the tailpipe promise.

116. The applicable standard both at the federal and state level is 50 mg/mile of NO_x for “FTP Style” driving—*i.e.*, city driving. Testing was conducted with a PEMS unit to simulate driving conditions under both the FTP certification cycle and the highway certification cycle. The Ram 1500 emits an average of 159 mg/mile of NO_x and a maximum of 1,283 mg/mile on flat roads, and 222 mg/mile of NO_x with a maximum of 1,859 mg/mile on hills. For highway driving, the average was 232 mg/mile and a maximum of 1,615 mg/mile, compared to the 70 mg/mile standard. On hills, the numbers are 353 mg/mile and 3,240 mg/mile. Testing also revealed a defeat device triggered by

⁵⁸ *Id.*

1 ambient temperature that significantly derates the performance of the NOx emission reduction
2 system, with ambient threshold temperatures above approximately 95°F and below 40–50°F. The
3 resulting NOx emissions increase by a factor of 10 when above or below these threshold
4 temperatures. Testing also revealed the presence of a defeat device when ascending hills, as the
5 emissions control system appears to be significantly derated after a short period of steady driving on
6 hills. As a result, NOx emissions increase after about 500–1000 seconds on hills with grades as low
7 as 1%, where emissions are often 10 times the standard. For grades as little as 0.4%, emissions were
8 found to be as high as 6 times the highway standard.

9 117. The Dodge Ram 1500's emissions software is a "Bosch EDC17," as is the Grand
10 Cherokee's. The same basic emissions system is in the Grand Cherokee EcoDiesel and the engines
11 are identical.

12 118. Although the Dodge Ram 2500 and 3500 are built with a different engine design,
13 these models also fail to meet emissions standards, and such failure adds to the plausibility of FCA's
14 deception with respect to the Ram 1500.

15 119. Testing was performed on a 2012 Dodge Ram 2500 powered by a Cummins 6.7 diesel
16 engine using a PEMS. The vehicle had accumulated approximately 70,000 miles at the time of
17 testing. The results show that the vehicle does not meet the relevant emission standards, as follows:
18 During on-road testing designed to simulate the driving profile of the Federal Test Procedure (FTP)
19 certification cycle, emissions were found to be 702 mg/mile on average, 3.5 times the federal and
20 California standard of 200 mg/mile. Over significant distances, emissions were found to be as high
21 as 1,100 to 2,800 mg/mile for periods lasting as long as 21% of the total drive time. That is 5.5 to 14
22 times the relevant standard. During on-road PEMS testing designed to simulate the driving profile of
23 the highway certification cycle, average emissions were found to be 756 mg/mile, or 1.9 times the
24 California (and Section 177 state) standard. Over significant distances, emissions were found to be
25 as high as 1,200 to 2,250 mg/mile for periods lasting as long as 16% of the total drive time. That
26 equates to 3.0 to 5.6 times the relevant standard.

27 120. The vehicle was also found to be particularly sensitive to hills, where steady speed
28 emissions could spike as high as 2,100 mg/mile (5.5 times the standard) on a steady 1.5% grade.

1 121. These facts put the lie to FCA's claims that EcoDiesel is a "clean diesel" with
2 "ultralow emissions," or that "no NOx" is emitted through the tailpipe. FCA misrepresents the
3 emissions performance of its vehicles equipped with EcoDiesel engines because the Affected
4 Vehicles spew NOx into the air at levels that far exceed U.S. emissions standards.

5 **J. The Damage**

6 122. FCA will not be able to make the Affected Vehicles comply with emissions standards
7 without substantially degrading their performance characteristics, including their horsepower and
8 efficiency. As a result, even if FCA is able to make the Affected Vehicles EPA-compliant, Plaintiffs
9 and Class members will nonetheless suffer actual harm and damages because their vehicles will no
10 longer perform as they did when purchased and as advertised. This will necessarily result in a
11 diminution in value of every Affected Vehicle, and it will cause owners of Affected Vehicles to pay
12 more for fuel while using their Affected Vehicles.

13 123. As a result of FCA's unfair, deceptive, and/or fraudulent business practices, and its
14 failure to disclose that under normal operating conditions the Affected Vehicles are not "clean"
15 diesels and emit more pollutants than permitted under federal and state laws, owners and/or lessees
16 of the Affected Vehicles have suffered losses in money and/or property. Had Plaintiffs and Class
17 members known of the higher emissions at the time they purchased or leased their Affected Vehicles,
18 they would not have purchased or leased those vehicles, or would have paid substantially less for the
19 vehicles than they did. Moreover, when and if FCA recalls the Affected Vehicles and degrades the
20 EcoDiesel Clean Diesel engine performance in order to make the Affected Vehicles compliant with
21 EPA standards, Plaintiffs and Class members will be required to spend additional sums on fuel and
22 will not obtain the performance characteristics of their vehicles when purchased. Moreover,
23 Affected Vehicles will necessarily be worth less in the marketplace because of their decrease in
24 performance and efficiency and increased wear on their vehicles' engines.

25 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

26 **A. Discovery Rule Tolling**

27 124. Class members had no way of knowing about FCA's deception with respect to the
28 unlawfully high emissions of its EcoDiesel Clean Diesel engine system in Affected Vehicles. To be

1 sure, FCA continues to market the Affected Vehicles as “clean” diesels and also continues to claim
2 that Affected Vehicles comply with EPA emissions standards.

3 125. Within the time period of any applicable statutes of limitation, Plaintiffs and members
4 of the proposed classes could not have discovered through the exercise of reasonable diligence that
5 FCA was concealing the conduct complained of herein and misrepresenting FCA’s true position with
6 respect to the emission qualities of the Affected Vehicles.

7 126. Plaintiffs and the other Class members did not discover, and did not know of, facts
8 that would have caused a reasonable person to suspect that FCA did not report information within its
9 knowledge to federal and state authorities, its dealerships, or consumers; nor would a reasonable and
10 diligent investigation have disclosed that FCA had concealed information about the true emissions of
11 the Affected Vehicles, which was discovered by Plaintiffs only shortly before this action was filed.
12 Nor, in any event, would such an investigation on the part of Plaintiffs and other Class members
13 have disclosed that FCA valued profits over truthful marketing and compliance with federal and state
14 law.

15 127. For these reasons, all applicable statutes of limitation have been tolled by operation of
16 the discovery rule with respect to claims as to the Affected Vehicles.

17 **B. Fraudulent Concealment Tolling**

18 128. All applicable statutes of limitation have also been tolled by FCA’s knowing and
19 active fraudulent concealment and denial of the facts alleged herein throughout the time period
20 relevant to this action.

21 129. Instead of disclosing its emissions scheme, or that the quality and quantity of
22 emissions from the Affected Vehicles were far worse than represented, and of its disregard of federal
23 and state law, FCA falsely represented that the Affected Vehicles complied with federal and state
24 emissions standards, that the diesel engines were “clean,” and that it was a reputable manufacturer
25 whose representations could be trusted.

C. Estoppel

130. FCA was under a continuous duty to disclose to Plaintiffs and Class members the true character, quality, and nature of emissions from the Affected Vehicles, and of those vehicles' emissions systems, and of the compliance of those systems with applicable federal and state law.

131. FCA knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality, and character of the emissions systems, and the emissions, of the Affected Vehicles.

132. FCA was also under a continuous duty to disclose to Plaintiffs and Class members that it had engaged in the conduct complained of herein contrary to federal and state emissions and clean air standards, and that it systematically devalued compliance with federal and state law regulating vehicle emissions and clean air.

133. Based on the foregoing, FCA is estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ALLEGATIONS

134. Plaintiffs bring this action on behalf of themselves and as a class action pursuant to the provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class and subclasses (collectively, the "Classes"):

Nationwide RICO Class

All persons or entities in the United States who owned or leased an "Affected Vehicle." Affected Vehicles include, without limitation, the diesel-powered 2014–2016 Jeep Grand Cherokee EcoDiesel and the diesel-powered 2014–2016 Dodge Ram EcoDiesel.

California Class

All persons or entities in California who owned or leased an "Affected Vehicle." Affected Vehicles include, without limitation, the diesel-powered 2014–2016 Jeep Grand Cherokee EcoDiesel and the diesel-powered 2014–2016 Dodge Ram EcoDiesel.

The Multistate Class

All persons who purchased an Affected Vehicle in the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New

York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and District of Columbia. Affected Vehicles include, without limitation, the diesel-powered 2014–2016 Jeep Grand Cherokee EcoDiesel and the diesel-powered 2014–2016 Dodge Ram EcoDiesel.

135. Excluded from the Classes are individuals who have personal injury claims resulting from the unlawfully high emissions in the EcoDiesel system of Affected Vehicles. Also excluded from the Classes are FCA and its subsidiaries and affiliates; all persons who make a timely election to be excluded from the Classes; governmental entities; and the Judge to whom this case is assigned and his/her immediate family. Plaintiffs reserve the right to revise the Class definitions based upon information learned through discovery.

136. Certification of Plaintiffs' claims for classwide treatment is appropriate because Plaintiffs can prove the elements of their claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

137. This action has been brought and may be properly maintained on behalf of each of the Classes proposed herein under Federal Rule of Civil Procedure 23.

138. **Numerosity**. Federal Rule of Civil Procedure 23(a)(1): The members of the Classes are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiffs are informed and believe that there are at least 140,000 owners of Dodge Ram 1500s and tens of thousands of owners of Grand Cherokees, the precise number of Class members is unknown to Plaintiffs, but may be ascertained from FCA's books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.

139. **Commonality and Predominance**: Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3): This action involves common questions of law and fact, which predominate over any questions affecting individual Class members, including, without limitation:

a. Whether FCA and Bosch engaged in the conduct alleged herein;

- b. Whether FCA designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the United States;
- c. Whether the EcoDiesel Clean Diesel engine system in the Affected Vehicles contains a defect in that it does not comply with U.S. EPA requirements and federal and state emissions regulations;
- d. Whether the EcoDiesel Clean Diesel engine system in Affected Vehicles can be made to comply with EPA and state standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
- e. Whether FCA and Bosch knew about the defeat device and, if so, how long FCA has known;
- f. Whether Bosch designed and manufactured a defeat device;
- g. Whether Bosch supplied the defeat device to FCA with the knowledge that FCA would use it in production of Affected Vehicles;
- h. Whether Bosch acted in concert with FCA and aided and abetted FCA's fraud;
- i. Whether FCA marketed, and distributed Affected Vehicles with a defeat device;
- j. Whether FCA's and Bosch's conduct violates RICO and other laws as asserted herein;
- k. Whether FCA's and Bosch's conduct violates consumer protection statutes and false advertising laws;
- l. Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;
- m. Whether FCA designed, advertised, marketed, distributed, leased, sold, or otherwise placed Affected Vehicles into the stream of commerce in the U.S.;
- n. Whether the EcoDiesel Clean Diesel engine system in the Affected Vehicles emits pollutants at levels that do not make them "clean" diesels and that do not comply with EPA requirements;
- o. Whether the EcoDiesel Clean Diesel engine system in Affected Vehicles can be made to comply with EPA standards without substantially degrading the performance and/or efficiency of the Affected Vehicles;
- p. Whether FCA knew about the unlawfully high emissions and, if so, how long FCA has known;

- q. Whether FCA designed, manufactured, marketed, and distributed Affected Vehicles with defective or otherwise inadequate emission controls;
- r. Whether Plaintiffs and the other Class members overpaid for their Affected Vehicles;
- s. Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief; and
- t. Whether Plaintiffs and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.

140. **Typicality**: Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims are typical of the other Class members' claims because, among other things, all Class members were comparably injured through Defendants' wrongful conduct as described above.

141. **Adequacy**: Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other members of the Classes they seek to represent; Plaintiffs have retained counsel competent and experienced in complex class action litigation; and Plaintiffs intend to prosecute this action vigorously. The Class members' interests will be fairly and adequately protected by Plaintiffs and their counsel.

142. **Declaratory and Injunctive Relief**: Federal Rule of Civil Procedure 23(b)(2): Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to each Class as a whole.

143. **Superiority**: Federal Rule of Civil Procedure 23(b)(3): A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for the members of the Classes to individually seek redress for Defendants' wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By

contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VIII. CLAIMS

A. Claims Brought on Behalf of the Nationwide RICO Class

COUNT I VIOLATIONS OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) VIOLATION OF 18 U.S.C. § 1962(C)–(D)

144. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

145. Plaintiffs bring this Count individually and on behalf of the Nationwide RICO Class against Defendants FCA, Robert Bosch GmbH, and Robert Bosch LLC (collectively, “RICO Defendants”).

146. The RICO Defendants are all “persons” under 18 U.S.C. § 1961(3) because they are capable of holding, and do hold, “a legal or beneficial interest in property.”

147. Section 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” Section 1962(d), in turn, makes it unlawful for “any person to conspire to violate.”

148. For many years now, the RICO Defendants have aggressively sought to increase the sales of Affected Vehicles in an effort to bolster revenue, augment profits and increase FCA’s share of the diesel vehicle market. Finding it impossible to achieve their goals lawfully, however, the RICO Defendants resorted instead to orchestrating a fraudulent scheme and conspiracy. In particular, the RICO Defendants, along with other entities and individuals, created and/or participated in the affairs of an illegal enterprise (“Emissions Fraud Enterprise”) whose direct purpose was to deceive the regulators and the public into believing the Affected Vehicles were “clean” and “environmentally friendly.” As explained in greater detail below, the RICO Defendants’ acts in furtherance of the Emissions Fraud Enterprise violate § 1962(c) and (d).

1 **1. The Members of the Emissions Fraud Enterprise**

2 149. Upon information and belief, the Emissions Fraud Enterprise consisted of the
3 following entities and individuals: FCA, Robert Bosch GmbH, and Robert Bosch LLC.

4 150. Robert Bosch GmbH and Robert Bosch LLC (together, “Bosch” or “Bosch
5 Defendants”) tested, manufactured, and sold the electronic control module (“ECM”) that managed
6 the emissions control system used by FCA in the Affected Vehicles. This particular ECM is more
7 formally referred to as the Electronic Diesel Control Unit 17 (“EDC Unit 17”).⁵⁹

8 151. Defendant Bosch GmbH is a multinational engineering and electronics company
9 headquartered in Gerlingen, Germany, which has hundreds of subsidiaries and companies. It wholly
10 owns defendant Bosch LLC, a Delaware limited liability company headquartered in Farmington
11 Hills, Michigan. As explained above, Bosch’s sectors and divisions are grouped by subject matter,
12 not location. The Mobility Solutions (formerly Automotive Technology) is the Bosch sector at issue,
13 particularly its Diesel Services division, and it encompasses employees of Bosch GmbH and Bosch
14 LLC. These individuals were responsible for the design, manufacture, development, customization,
15 and supply of the defeat device to FCA for use in the Affected Vehicles.

16 152. Bosch worked with FCA, Volkswagen, and Mercedes to develop and implement a
17 specific and unique set of software algorithms to surreptitiously evade emissions regulations. Bosch
18 customized their EDC Unit 17s for installation in the Affected Vehicles with unique software code to
19 detect when it was undergoing emissions testing, as described above, and did so for other vehicles
20 with defeat devices in Volkswagen and Mercedes vehicles.⁶⁰

21 153. Bosch’s conduct with respect to Volkswagen, outlined below, adds plausibility to its
22 participation in the enterprise herein. For example, Bosch was well aware that the EDC Unit 17
23 would be used by FCA to cheat on emissions testing. Bosch was also critical to the concealment of
24
25

26 ⁵⁹ http://www.bosch-presse.de/presseforum/details.htm?txtID=7421&tk_id=108.

27 ⁶⁰ Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
28 (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

1 the defeat device in communications with U.S. regulators and went even further to actively lobby
 2 U.S. lawmakers on behalf of Volkswagen and its “Clean Diesel” vehicles.

3 154. EDC Unit 17 could not effectively lower NO_x emissions to legal levels during normal
 4 operating conditions. In order to pass the emissions test, then, EDC Unit 17 is equipped with a
 5 “defeat device,” which is software that allows the vehicle to determine whether it is being operated
 6 under normal conditions or testing conditions.

7 155. As was publicly reported, the Bosch Defendants, seeking to conceal their involvement
 8 in the unlawful Emissions Fraud Enterprise, sent a letter to Volkswagen AG in 2007 stating that
 9 Volkswagen diesels *could not be lawfully operated* if the LNT or SCR after-treatment system was
 10 disabled.⁶¹ The exact same logic applies to the FCA Affected Vehicles.

11 156. Indeed, notwithstanding their knowledge that the Volkswagen diesels *could not be*
 12 *lawfully operated* if the emissions system was disabled, the Bosch Defendants, driven to cement their
 13 position as a leading supplier of diesel emissions equipment, went on to sell approximately *eleven*
 14 *million* EDC Unit 17s to Volkswagen over an eight year period, and hundreds of thousands of FCA
 15 Affected Vehicles.⁶²

16 157. The persons and entities described in the preceding section are members of and
 17 constitute an “association-in-fact” enterprise.

18 158. At all relevant times, the Emissions Fraud Enterprise: (a) had an existence separate
 19 and distinct from each Defendant; (b) was separate and distinct from the pattern of racketeering in
 20 which the RICO Defendants engaged; and (c) was an ongoing organization consisting of legal
 21 entities, including the FCA Defendants, the Bosch Defendants, and other entities and individuals
 22 associated for the common purpose of designing, manufacturing, distributing, testing, and selling the
 23 Affected Vehicles through fraudulent COCs and EOs, false emissions tests, deceptive and misleading
 24

25 ⁶¹ Stef Shrader, *Feds Are Now Investigating Volkswagen Supplier Bosch Over Dieselgate*,
 26 Jalopnik (Nov. 19, 2015), <http://jalopnik.com/feds-are-now-investigating-volkswagen-supplier-bosch-ov-1743624448>.

27 ⁶² Michael Taylor, *EPA Investigating Bosch over VW Diesel Cheater Software*, Car and Driver
 28 (Nov. 23, 2015), <http://blog.caranddriver.com/epa-investigating-bosch-over-vw-diesel-cheater-software>.

1 marketing and materials, and deriving profits and revenues from those activities. Each member of
2 the Emissions Fraud Enterprise shared in the bounty generated by the enterprise, *i.e.*, by sharing the
3 benefit derived from increased sales revenue generated by the scheme to defraud consumers and
4 franchise dealers alike nationwide.⁶³

5 159. The Emissions Fraud Enterprise functioned by selling vehicles and component parts
6 to the consuming public. Many of these products are legitimate, including vehicles that do not
7 contain defeat devices. However, the RICO Defendants and their co-conspirators, through their
8 illegal Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent scheme
9 to increase revenue for Defendants and the other entities and individuals associated-in-fact with the
10 Enterprise's activities through the illegal scheme to sell the Affected Vehicles.

11 160. The Emissions Fraud Enterprise engaged in, and its activities affected interstate and
12 foreign commerce, because it involved commercial activities across state boundaries, such as the
13 marketing, promotion, advertisement and sale or lease of the Affected Vehicles throughout the
14 country, and the receipt of monies from the sale of the same.

15 161. Within the Emissions Fraud Enterprise, there was a common communication network
16 by which co-conspirators shared information on a regular basis. The Emissions Fraud Enterprise
17 used this common communication network for the purpose of manufacturing, marketing, testing, and
18 selling the Affected Vehicles to the general public nationwide.

19 162. Each participant in the Emissions Fraud Enterprise had a systematic linkage to each
20 other through corporate ties, contractual relationships, financial ties, and continuing coordination of
21 activities. Through the Emissions Fraud Enterprise, the RICO Defendants functioned as a continuing
22 unit with the purpose of furthering the illegal scheme and their common purposes of increasing their
23 revenues and market share, and minimizing losses.

24 163. The RICO Defendants participated in the operation and management of the Emissions
25 Fraud Enterprise by directing its affairs, as described herein. While the RICO Defendants

26 ⁶³ Volkswagen sold more Affected Vehicles by utilizing an emissions control system that was
27 cheaper than SCRs, all the while charging consumers a premium for purportedly "clean,"
28 "environmentally friendly" and "fuel efficient" vehicles. Bosch, in turn, sold more EDC Units
because Volkswagen manufactured and sold more Affected Vehicles.

participated in, and are members of, the enterprise, they have a separate existence from the enterprise, including distinct legal statuses, different offices and roles, bank accounts, officers, directors, employees, individual personhood, reporting requirements, and financial statements.

164. FCA exerted substantial control and participated in the affairs of the Emissions Fraud Enterprise by:

- a. Designing the Affected Vehicles with defeat devices;
- b. Failing to correct or disable the defeat devices when warned;
- c. Manufacturing, distributing, and selling the Affected Vehicles that emitted greater pollution than allowable under the applicable regulations;
- d. Misrepresenting and omitting (or causing such misrepresentations and omissions to be made) vehicle specifications on COC and EO applications;
- e. Introducing the Affected Vehicles into the stream of U.S. commerce without a valid EPA COC and/or CARB EO;
- f. Concealing the existence of the defeat devices and the unlawfully high emissions from regulators and the public;
- g. Persisting in the manufacturing, distribution, and sale of the Affected Vehicles even after questions were raised about the emissions testing and discrepancies concerning the same;
- h. Misleading government regulators as to the nature of the defeat devices and the defects in the Affected Vehicles;
- i. Misleading the driving public as to the nature of the defeat devices and the defects in the Affected Vehicles;
- j. Designing and distributing marketing materials that misrepresented and concealed the defect in the vehicles;
- k. Otherwise misrepresenting or concealing the defective nature of the Affected Vehicles from the public and regulators; and
- l. Illegally selling and/or distributing the Affected Vehicles; collecting revenues and profits from the sale of such products; and ensuring that the other RICO Defendants and unnamed co-conspirators complied with the fraudulent scheme.

165. Bosch also participated in, operated and/or directed the Emissions Fraud Enterprise. Bosch participated in the fraudulent scheme by manufacturing, installing, testing, modifying, and supplying the EDC Unit 17 which operated as a “defeat device” in the Affected Vehicles. Bosch

1 exercised tight control over the coding and other aspects of the defeat device software and was
2 closely collaborated with FCA to develop, customize, and calibrate the defeat devices. Additionally,
3 Bosch continuously cooperated with the FCA to ensure that the EDC Unit 17 was fully integrated
4 into the Affected Vehicles. Bosch also participated in the affairs of the Enterprise by concealing the
5 defeat devices on U.S. documentation and in communications with U.S. regulators. Bosch collected
6 tens of millions of dollars in revenues and profits from the hidden defeat devices installed in the
7 Affected Vehicles.

8 166. Without the RICO Defendants' willing participation, including Bosch's active
9 involvement in developing and supplying the critical defeat devices for the Affected Vehicles, the
10 Emissions Fraud Enterprise's scheme and common course of conduct would not have been
11 successful.

12 167. The RICO Defendants directed and controlled the ongoing organization necessary to
13 implement the scheme at meetings and through communications of which Plaintiffs cannot fully
14 know at present, because such information lies in the Defendants' and others' hands.

15 168. The members of the Emissions Fraud Enterprise all served a common purpose;
16 namely, to outsell their law-abiding competitors and increase their revenues through the sale of as
17 many Affected Vehicles (including the emissions components made and sold by Bosch) as possible.
18 Each member of the Emissions Fraud Enterprise shared the bounty generated by the enterprise, *i.e.*,
19 by sharing the benefit derived from increased sales revenue generated by the scheme to defraud.
20 FCA sold more Affected Vehicles by utilizing an emissions control system that was cheaper to
21 install and allowed for generous performance and efficiency tuning, all the while charging consumers
22 a premium for purportedly "clean," "environmentally friendly" and "fuel efficient" Affected
23 Vehicles. The Bosch Defendants, in turn, sold more EDC Units because FCA manufactured and sold
24 more Affected Vehicles. The RICO Defendants achieved their common purpose by repeatedly
25 misrepresenting and concealing the nature of the Affected Vehicles and the ability of the emissions
26 control systems (including the Bosch-supplied parts) to effectively reduce toxic emissions during
27 normal operating conditions.

1 **2. The Predicate Acts**

2 169. To carry out, or attempt to carry out the scheme to defraud, the RICO Defendants
3 conducted or participated in the conduct of the affairs of the Emissions Fraud Enterprise through a
4 pattern of racketeering activity that employed the use of the mail and wire facilities, in violation of
5 18 U.S.C. §§ 1341 (mail fraud) and 1343 (wire fraud).

6 170. Specifically, the RICO Defendants participated in the scheme to defraud by using
7 mail, telephone, and the Internet to transmit writings travelling in interstate or foreign commerce.

8 171. The RICO Defendants' use of the mails and wires include, but are not limited to, the
9 transmission, delivery, or shipment of the following by the RICO Defendants or third parties that
10 were foreseeably caused to be sent as a result of Defendants' illegal scheme:

- 11 a. Application for certificates submitted to the EPA and CARB;
- 12 b. The Affected Vehicles themselves;
- 13 c. Component parts for the defeat devices;
- 14 d. Essential hardware for the Affected Vehicles;
- 15 e. Falsified emission tests;
- 16 f. Fraudulently-obtained EPA COCs and CARB EOs;
- 17 g. Vehicle registrations and plates as a result of the fraudulently-
18 obtained EPA COCs and CARB EOs;
- 19 h. Documents and communications that facilitated the falsified
20 emission tests;
- 21 i. False or misleading communications intended to lull the public
22 and regulators from discovering the defeat devices and/or other
23 auxiliary devices;
- 24 j. Sales and marketing materials, including advertising, websites,
25 product packaging, brochures, and labeling, which
26 misrepresented and concealed the true nature of the Affected
27 Vehicles;
- 28 k. Documents intended to facilitate the manufacture and sale of
 the Affected Vehicles, including bills of lading, invoices,
 shipping records, reports and correspondence;
- l. Documents to process and receive payment for the Affected
 Vehicles by unsuspecting franchise dealers, including invoices
 and receipts;

- m. Payments to Bosch;
- n. Deposits of proceeds; and
- o. Other documents and things, including electronic communications.

172. The RICO Defendants utilized the interstate and international mail and wires for the purpose of obtaining money or property by means of the omissions, false pretense, and misrepresentations described therein.

173. The RICO Defendants also used the internet and other electronic facilities to carry out the scheme and conceal the ongoing fraudulent activities. Specifically, FCA made misrepresentations about the Affected Vehicles on their websites, YouTube, and through ads online, all of which were intended to mislead regulators and the public about the fuel efficiency, emissions standards, and other performance metrics.

174. The RICO Defendants also communicated by U.S. Mail, by interstate facsimile, and by interstate electronic mail with various other affiliates, regional offices, divisions, dealerships and other third-party entities in furtherance of the scheme.

175. The mail and wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct to deceive regulators and consumers and lure consumers into purchasing the Affected Vehicles, which Defendants knew or recklessly disregarded as emitting illegal amounts of pollution, despite their advertising campaign that the Affected Vehicles were "clean" diesel cars.

176. Many of the precise dates of the fraudulent uses of the U.S. Mail and interstate wire facilities have been deliberately hidden, and cannot be alleged without access to Defendants' books and records. However, Plaintiffs have described the types of, and in some instances, occasions on which the predicate acts of mail and/or wire fraud occurred. They include thousands of communications to perpetuate and maintain the scheme, including the things and documents described in the preceding paragraphs.

177. The RICO Defendants have not undertaken the practices described herein in isolation, but as part of a common scheme and conspiracy. In violation of 18 U.S.C. § 1962(d), the RICO

1 Defendants conspired to violate 18 U.S.C. § 1962(c), as described herein. Various other persons,
2 firms and corporations, including third-party entities and individuals not named as defendants in this
3 Complaint, have participated as co-conspirators with the RICO Defendants in these offenses and
4 have performed acts in furtherance of the conspiracy to increase or maintain revenues, increase
5 market share, and/or minimize losses for the Defendants and their unnamed co-conspirators
6 throughout the illegal scheme and common course of conduct.

7 178. The RICO Defendants aided and abetted others in the violations of the above laws,
8 thereby rendering them indictable as principals in the 18 U.S.C. §§ 1341 and 1343 offenses.

9 179. To achieve their common goals, the RICO Defendants hid from the general public the
10 unlawfulness and emission dangers of the Affected Vehicles and obfuscated the true nature of the
11 defect even after regulators raised concerns. The RICO Defendants suppressed and/or ignored
12 warnings from third parties, whistleblowers, and governmental entities about the discrepancies in
13 emissions testing and the defeat devices present in the Affected Vehicles.

14 180. The RICO Defendants and each member of the conspiracy, with knowledge and
15 intent, have agreed to the overall objectives of the conspiracy and participated in the common course
16 of conduct to commit acts of fraud and indecency in designing, manufacturing, distributing,
17 marketing, testing, and/or selling the Affected Vehicles (and the defeat devices contained therein).

18 181. Indeed, for the conspiracy to succeed each of the RICO Defendants and their co-
19 conspirators had to agree to implement and use the similar devices and fraudulent tactics—
20 specifically complete secrecy about the defeat devices in the Affected Vehicles.

21 182. The RICO Defendants knew and intended that government regulators, as well as
22 Plaintiffs and Class members, would rely on the material misrepresentations and omissions made by
23 them about the Affected Vehicles. The RICO Defendants knew and intended Plaintiffs and the Class
24 would incur costs and damages as a result. As fully alleged herein, Plaintiffs and the Class relied
25 upon Defendants' representations and omissions that were made or caused by them. Plaintiffs'
26 reliance is made obvious by the fact that: (1) they purchased hundreds of thousands of vehicles that
27 never should have been introduced into the U.S. stream of commerce and whose worth is far less. In
28 addition, the EPA, CARB, and other regulators relied on the misrepresentations and material

1 omissions made or caused to be made by the RICO Defendants; otherwise FCA could not have
2 obtained valid COCs and EOs to sell the Affected Vehicles.

3 183. The RICO Defendants' conduct in furtherance of this scheme was intentional.
4 Plaintiffs and the Class were harmed as a result of the RICO Defendants' intentional conduct.
5 Plaintiffs, the Class, regulators and consumers, among others, relied on the RICO Defendants'
6 material misrepresentations and omissions.

7 184. As described herein, the RICO Defendants engaged in a pattern of related and
8 continuous predicate acts for many years. The predicate acts constituted a variety of unlawful
9 activities, each conducted with the common purpose of defrauding Plaintiffs and other Class
10 members and obtaining significant monies and revenues from them and through them while
11 providing Affected Vehicles worth significantly less than the invoice price paid. The predicate acts
12 also had the same or similar results, participants, victims, and methods of commission. The
13 predicate acts were related and not isolated events.

14 185. The predicate acts all had the purpose of generating significant revenue and profits for
15 the RICO Defendants at the expense of Plaintiffs and the Class, and consumers. The predicate acts
16 were committed or caused to be committed by the RICO Defendants through their participation in
17 the Emissions Fraud Enterprise and in furtherance of its fraudulent scheme, and were interrelated in
18 that they involved obtaining Plaintiffs' and Class members' funds, artificially inflating the brand and
19 dealership goodwill values, and avoiding the expenses associated with remediating the Affected
20 Vehicles.

21 186. During the design, manufacture, testing, marketing and sale of the Affected Vehicles,
22 the RICO Defendants shared technical, marketing and financial information that plainly revealed the
23 emissions control systems in the Affected Vehicles as the ineffective, illegal and fraudulent piece of
24 technology they were and are. Nevertheless, the RICO Defendants shared and disseminated
25 information that deliberately represented Affected Vehicles as "clean," "environmentally friendly,"
26 and "fuel efficient."

187. By reason of and as a result of the conduct of the RICO Defendants and, in particular, its pattern of racketeering activity, Plaintiffs and the Class have been injured in multiple ways, including, but not limited to:

- a. Overpayment for Affected Vehicles, in that Plaintiffs and the Class believed they were paying for vehicles that met certain emission and fuel efficiency standards and obtained vehicles that were not legal to sell in the U.S.; and
- b. The value of the Affected Vehicles has diminished, thus reducing their sale and resale value.

188. The RICO Defendants' violations of 18 U.S.C. § 1962(c) and (d) have directly and proximately caused injuries and damages to Plaintiffs and the Class, and Plaintiffs and the Class are entitled to bring this action for three times their actual damages, as well as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18 U.S.C. § 1964(c). Each of the RICO defendants knew, understood and intended for members of the Class to purchase the Affected Vehicles, and knew, understood, and foresaw that revelation of the truth would injure members of the Class.

B. Claims Brought on Behalf of the California Class

COUNT I

FRAUD BY CONCEALMENT UNDER CALIFORNIA LAW

189. Plaintiff Jose Chavez incorporates by reference all paragraphs as though fully set forth herein.

190. This claim is brought on behalf of the California Class against FCA and Bosch.

191. FCA designed, manufactured, marketed, sold, and/or leased Affected Vehicles to Plaintiff and the California Class members. FCA represented to Plaintiff and the California Class members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles had no significant defects, complied with EPA and state emissions regulations, and would perform and operate properly when driven in normal usage. Bosch was aware of FCA's representations and their falsity.

1 192. The Affected Vehicles purchased or leased by Plaintiff and the California Class
2 members were, in fact, defective, non-EPA compliant, and unreliable, because the NOx reduction
3 system in the Affected Vehicles does not effectively mitigate emissions.

4 193. FCA intentionally concealed, suppressed, and failed to disclose the facts that the
5 Affected Vehicles had defective emissions controls, emitted unlawfully high levels of pollutants such
6 as NOx, and were non-compliant with EPA emission requirements.

7 194. As alleged in this complaint, at all relevant times, FCA has held out the Affected
8 Vehicles to be EPA-compliant reduced emissions vehicles. FCA disclosed certain details about the
9 EcoDiesel Clean Diesel engine, but nonetheless, FCA intentionally failed to disclose the important
10 facts that the Affected Vehicles had defective emissions controls, emitted unlawfully high levels of
11 pollutants, and were non-compliant with EPA emissions requirements, making other disclosures
12 about the emission system deceptive.

13 195. The truth about the defective emissions controls, unlawfully high emissions, and non-
14 compliance with EPA emissions requirements was known only to FCA; Plaintiff and the California
15 Class members did not know of these facts and FCA actively concealed these facts from Plaintiff and
16 California Class members.

17 196. Plaintiff and California Class members reasonably relied upon FCA's deception.
18 They had no way of knowing that FCA's representations were false and/or misleading. As
19 consumers, Plaintiff and California Class members did not and could not unravel FCA's deception
20 on their own. Rather, FCA intended to deceive Plaintiff and California Class members by
21 concealing the true facts about the Affected Vehicles' emissions.

22 197. FCA also concealed and suppressed material facts concerning what is evidently the
23 true culture of FCA—one characterized by an emphasis on profits and sales above compliance with
24 federal and state clean air law, and emissions regulations that are meant to protect the public and
25 consumers. It also emphasized profits and sales above the trust that Plaintiff and members placed in
26 its representations. Consumers buy diesel cars from FCA because they feel they are clean diesel
27 cars. They do not want to be spewing noxious gases into the environment. And yet, that is precisely
28 what the Affected Vehicles are doing during real-world driving conditions.

1 198. FCA's false representations were material to consumers because they concerned the
2 quality of the Affected Vehicles, because they concerned compliance with applicable federal and
3 state laws and regulations regarding clean air and emissions, and also because the omissions played a
4 significant role in the value of the vehicles. As FCA well knew, its customers, including Plaintiff
5 and California Class members, highly valued that the vehicles they were purchasing or leasing were
6 clean diesel cars with reduced emissions, and they paid accordingly.

7 199. FCA had a duty to disclose the emissions defect, defective design of emissions
8 controls, and violations with respect to the Affected Vehicles because details of the true facts were
9 known and/or accessible only to FCA, because FCA had exclusive knowledge as to such facts, and
10 because FCA knew these facts were not known to or reasonably discoverable by Plaintiff or
11 California Class members. FCA also had a duty to disclose because it made general affirmative
12 representations about the qualities of its vehicles with respect to emissions standards, starting with
13 references to them as *reduced emissions* diesel cars and as compliant with all laws in each state,
14 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
15 forth above regarding the actual emissions of its vehicles, its actual philosophy with respect to
16 compliance with federal and state clean air laws and emissions regulations, and its actual practices
17 with respect to the vehicles at issue. Having volunteered to provide information to Plaintiff, FCA
18 had the duty to disclose not just the partial truth, but the entire truth. These omitted and concealed
19 facts were material because they directly impact the value of the Affected Vehicles purchased or
20 leased by Plaintiff and California Class members. Whether a manufacturer's products pollute,
21 comply with federal and state clean air laws and emissions regulations, and whether that
22 manufacturer tells the truth with respect to such compliance or non-compliance, are material
23 concerns to a consumer, including with respect to the emissions certifications testing their vehicles
24 must pass. FCA represented to Plaintiff and California Class members that they were purchasing or
25 leasing *reduced emission* diesel vehicles, when in fact, they were purchasing or leasing defective and
26 unlawfully high emission vehicles.

27 200. FCA actively concealed and/or suppressed these material facts, in whole or in part, to
28 pad and protect its profits and to avoid the perception that its vehicles were not clean diesel vehicles

1 and did not or could not comply with federal and state laws governing clean air and emissions, which
2 perception would hurt the brand's image and cost FCA money, and it did so at the expense of
3 Plaintiff and California Class members.

4 201. On information and belief, FCA has still not made full and adequate disclosures and
5 continues to defraud Plaintiff and California Class members by concealing material information
6 regarding the emissions qualities of the Affected Vehicles.

7 202. Plaintiff and California Class members were unaware of the omitted material facts
8 referenced herein, and they would not have acted as they did if they had known of the concealed
9 and/or suppressed facts, in that they would not have purchased purportedly reduced emissions diesel
10 cars manufactured by FCA, and/or would not have continued to drive their heavily polluting
11 vehicles, or would have taken other affirmative steps in light of the information concealed from
12 them. Plaintiff's and members' actions were justified. FCA was in exclusive control of the material
13 facts, and such facts were not generally known to the public, Plaintiff, or California Class members.

14 203. Because of the concealment and/or suppression of the facts, Plaintiff and California
15 Class members have sustained damage because they own vehicles that are diminished in value as a
16 result of FCA's concealment of the true quality and quantity of those vehicles' emissions and FCA's
17 failure to timely disclose the defect or defective design of the EcoDiesel Clean Diesel engine system,
18 the actual emissions qualities and quantities of FCA-branded vehicles, and the serious issues
19 engendered by FCA's corporate policies. Had Plaintiff and California Class members been aware of
20 the true emissions facts with regard to the Affected Vehicles, and FCA's disregard for the truth and
21 compliance with applicable federal and state laws and regulations, Plaintiff and members who
22 purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles or
23 would not have purchased or leased them at all.

24 204. The value of Plaintiff's and California Class members' vehicles has diminished as a
25 result of FCA's fraudulent concealment of the defective emissions controls of the Affected Vehicles,
26 the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA
27 emissions requirements, all of which has greatly tarnished the FCA brand name, which is attached to
28 Plaintiff's and California Class members' vehicles, and made any reasonable consumer reluctant to

1 purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market
2 value for the vehicles.

3 205. Bosch aided and abetted FCA's fraudulent concealment.

4 206. Accordingly, FCA is liable to Plaintiff and California Class members for damages in
5 an amount to be proven at trial.

6 207. FCA's acts were done wantonly, maliciously, oppressively, deliberately, with intent to
7 defraud, and in reckless disregard of Plaintiff's and California Class members' rights and the
8 representations that FCA made to them, in order to enrich FCA. FCA's conduct warrants an
9 assessment of punitive damages in an amount sufficient to deter such conduct in the future, which
10 amount is to be determined according to proof.

11 **COUNT II**

12 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW** 13 **(CAL. BUS. & PROF. CODE § 17200 *ET SEQ.*)**

14 208. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

15 209. This claim is brought on behalf of the California Class against FCA and Bosch.

16 210. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et*
17 *seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act
18 or practice and unfair, deceptive, untrue or misleading advertising."

19 211. FCA's conduct, as described herein, was and is in violation of the UCL. FCA's
20 conduct violates the UCL in at least the following ways:

- 21 a. By failing to disclose that the NOx reduction system in the Affected Vehicles
22 does not effectively mitigate emissions;
- 23 b. By selling and leasing Affected Vehicles that suffer from a defective
24 emissions control system and that emit unlawfully high levels of pollutants
25 under normal driving conditions;
- 26 c. By knowingly and intentionally concealing from Plaintiff and the California
27 Class members that the Affected Vehicles suffer from a defective emissions
28

1 control system and emit unlawfully high levels of pollutants under normal
2 driving conditions;

3 d. By marketing Affected Vehicles as reduced emissions vehicles possessing
4 functional and defect-free, EPA-compliant diesel engine systems;

5 e. By deceptively obtaining EPA certification for Affected Vehicles;

6 f. By violating federal laws, including the Clean Air Act; and

7 g. By violating other California laws, including California consumer protection
8 laws and California laws governing vehicle emissions and emission testing
9 requirements.

10 212. FCA's misrepresentations and omissions alleged herein caused Plaintiff and the
11 California Class members to make their purchases or leases of their Affected Vehicles. Absent those
12 misrepresentations and omissions, Plaintiff and the California Class members would not have
13 purchased or leased these vehicles, would not have purchased or leased Affected Vehicles at the
14 prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did
15 not contain defective EcoDiesel Clean Diesel engine systems that failed to comply with EPA and
16 California emissions standards.

17 213. Accordingly, Plaintiff and the California Class members have suffered injury in fact,
18 including lost money or property, as a result of FCA's misrepresentations and omissions.

19 214. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
20 FCA under Cal. Bus. & Prof. Code § 17200.

21 215. Plaintiff requests that this Court enter such orders or judgments as may be necessary
22 to enjoin FCA from continuing its unfair, unlawful, and/or deceptive practices and to restore to
23 Plaintiff and members of the California Class any money it acquired by unfair competition, including
24 restitution and/or disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code
25 § 3345, and for such other relief set forth below.

COUNT III

**VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT
(CAL. CIV. CODE § 1750 *ET SEQ.*)**

216. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

217. This claim is brought on behalf of the California Class against FCA and Bosch.

218. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

219. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

220. Plaintiff and the California Class members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiff, the California Class members, and FCA are "persons" as defined in Cal. Civ. Code § 1761(c).

221. As alleged above, FCA made representations concerning the benefits, efficiency, performance, and safety features of the EcoDiesel Clean Diesel engine systems that were misleading.

222. In purchasing or leasing the Affected Vehicles, Plaintiff and the California Class members were deceived by FCA's failure to disclose that the Affected Vehicles were equipped with defective EcoDiesel Clean Diesel engine systems that failed EPA and California emissions standards.

223. FCA's conduct, as described herein, was and is in violation of the CLRA. FCA's conduct violates at least the following enumerated CLRA provisions:

- a. Cal. Civ. Code § 1770(a)(2): misrepresenting the approval or certification of goods.
- b. Cal. Civ. Code § 1770(a)(3): misrepresenting the certification by another.
- c. Cal. Civ. Code § 1770(a)(5): representing that goods have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have.
- d. Cal. Civ. Code § 1770(a)(7): representing that goods are of a particular standard, quality, or grade, if they are of another.
- e. Cal. Civ. Code § 1770(a)(9): advertising goods with intent not to sell them as advertised.

1 f. Cal. Civ. Code § 1770(a)(16): representing that goods have been supplied in
2 accordance with a previous representation when they have not.

3 224. Plaintiff and the California Class members have suffered injury in fact and actual
4 damages resulting from FCA's material omissions and misrepresentations and sale of Affected
5 Vehicles with defective emissions controls because they paid an inflated purchase or lease price for
6 the Affected Vehicles and because they stand to pay additional fuel costs if and when their Affected
7 Vehicles are made to comply with FCA's promises.

8 225. FCA knew, should have known, or was reckless in not knowing of the defective
9 design and/or manufacture of the EcoDiesel Clean Diesel engine systems, and that the Affected
10 Vehicles were not suitable for their intended use.

11 226. The facts concealed and omitted by FCA to Plaintiff and the California Class
12 members are material in that a reasonable consumer would have considered them to be important in
13 deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiff and
14 the California Class members known about the defective nature of the Affected Vehicles, and their
15 non-compliance with EPA requirements, they would not have purchased or leased the Affected
16 Vehicles or would not have paid the prices they paid.

17 227. Plaintiff and the California Class members have provided FCA with notice of its
18 violations of the CLRA pursuant to Cal. Civ. Code § 1782(a). The notice was transmitted to FCA on
19 November 28, 2016.

20 228. Plaintiff's and the California Class members' injuries were proximately caused by
21 FCA's unlawful and deceptive business practices.

22 229. In accordance with Cal. Civ. Code § 1780(a), Plaintiff and members of the California
23 Class seek injunctive relief for FCA's violations of the CLRA.

24 230. While Plaintiff and the California Class members do not seek to recover damages
25 under the CLRA in this initial Complaint, after mailing appropriate notice and demand in accordance
26 with Cal. Civ. Code § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also
27 include a request for compensatory and punitive damages.
28

COUNT IV

**VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW
(CAL. BUS. & PROF. CODE § 17500 *ET SEQ.*)**

231. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

232. This claim is brought on behalf of the California Class against FCA and Bosch.

233. Cal. Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with intent directly or indirectly to dispose of real or personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, ... or in any other manner or means whatever, including over the Internet, any statement ... which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.”

234. FCA caused to be made or disseminated through California and the U.S., through advertising, marketing, and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known, to FCA to be untrue and misleading to consumers, including Plaintiff and the California Class members.

235. FCA has violated Cal. Bus. & Prof. Code § 17500 because the misrepresentations and omissions regarding the functionality, reliability, environmental-friendliness, lawfulness, and safety of Affected Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

236. Plaintiff and the California Class members have suffered injury in fact, including the loss of money or property, as a result of FCA’s unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Vehicles, Plaintiff and the California Class members relied on the misrepresentations and/or omissions of FCA with respect to the functionality, reliability, environmental-friendliness, lawfulness, and safety of the Affected Vehicles. FCA’s representations turned out not to be true because the Affected Vehicles are distributed with EcoDiesel engine systems that include defective emissions controls. Had Plaintiff and the California Class members known this, they would not have purchased or leased their Affected Vehicles and/or paid as much for

1 them. Accordingly, Plaintiff and the California Class members overpaid for their Affected Vehicles
2 and did not receive the benefit of their bargain.

3 237. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
4 conduct of FCA's business. FCA's wrongful conduct is part of a pattern or generalized course of
5 conduct that is still perpetuated and repeated, both in the State of California and nationwide.

6 238. Plaintiff, individually and on behalf of the California Class, requests that this Court
7 enter such orders or judgments as may be necessary to enjoin FCA from continuing their unfair,
8 unlawful, and/or deceptive practices and to restore to Plaintiff and the other members any money
9 FCA acquired by unfair competition, including restitution and/or disgorgement, and for such other
10 relief set forth below.

11 **C. Claims Brought on Behalf of the Alabama Subclass**

12 **COUNT I**

13 **VIOLATIONS OF THE ALABAMA DECEPTIVE**
14 **TRADE PRACTICES ACT**
(ALA. CODE § 8-19-1 ET SEQ.)

15 239. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

16 240. Plaintiff brings this Count on behalf of the Alabama Subclass against FCA.

17 241. Plaintiff and the Subclass members are "consumers" within the meaning of Ala. Code
18 § 8-19-3(2).

19 242. Plaintiff, the Subclass members, and Defendant are "persons" within the meaning of
20 Ala. Code § 8-19-3(5).

21 243. The Affected Vehicles are "goods" within the meaning of Ala. Code § 8-19-3(3).

22 244. Defendant was and is engaged in "trade or commerce" within the meaning of Ala.
23 Code § 8-19-3(8).

24 245. The Alabama Deceptive Trade Practices Act ("Alabama DTPA") declares several
25 specific actions to be unlawful, including: "(5) Representing that goods or services have
26 sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have,"
27 "(7) Representing that goods or services are of a particular standard, quality, or grade, or that goods
28 are of a particular style or model, if they are of another," and "(27) Engaging in any other

unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.”
Ala. Code § 8-19-5.

246. Plaintiff intends to assert a claim under the Alabama DTPA. Plaintiff will make a demand in satisfaction of Ala. Code § 8-19-3 and may amend this Complaint to assert claims under the Alabama DTPA once the required 15 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Alabama DTPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ALABAMA LAW)

247. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

248. This claim is brought on behalf of the Alabama Subclass against FCA.

249. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

250. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

251. Defendant knew these representations were false when made.

252. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 253. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 254. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 255. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 256. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 257. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 258. Defendant’s false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 259. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant’s actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer’s products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 260. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 261. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 262. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 263. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 3 or would not have purchased or leased them at all.

4 264. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 10 vehicles.

11 265. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 12 amount to be proven at trial.

13 266. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 17 future, which amount is to be determined according to proof.

18 **D. Claims Brought on Behalf of the Alaska Subclass**

19 **COUNT I**

20 **VIOLATION OF THE ALASKA UNFAIR TRADE**
 21 **PRACTICES AND CONSUMER PROTECTION ACT**
 22 **(ALASKA STAT. ANN. § 45.50.471 ET SEQ.)**

23 198. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 267. Plaintiff brings this Count on behalf of the Alaska Subclass against FCA.

25 268. The Alaska Consumer Protection Act ("Alaska CPA") proscribes unfair methods of
 26 competition and unfair or deceptive acts or practices in the conduct of trade or commerce unlawful,
 27 including: "(4) representing that goods or services have sponsorship, approval, characteristics,
 28 ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship,
 approval, status, affiliation, or connection that the person does not have;" "(6) representing that

goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;” “(8) advertising goods or services with intent not to sell them as advertised;” or “(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression, or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged.” Alaska Stat. Ann. § 45.50.471. Plaintiff will make a demand in satisfaction of Alaska Stat. Ann. § 45.50.535, and may amend this Complaint to assert claims under the Alaska CPA once the required notice period has elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the Alaska CPA.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ALASKA LAW)

269. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

270. This claim is brought on behalf of the Alaska Subclass against FCA.

271. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

272. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-

1 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
2 properly when driven in normal usage.

3 273. Defendant knew these representations were false when made.

4 274. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
5 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
6 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
7 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions.

9 275. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 276. As alleged in this Complaint, at all relevant times, Defendant has held out the
17 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
18 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
19 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
20 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
21 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
22 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
23 making other disclosures about the emission system deceptive.

24 277. The truth about the defective emissions controls and Defendant's manipulations of
25 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
26 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
27 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
28 members.

1 278. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
2 had no way of knowing that Defendant's representations were false and/or misleading. As
3 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
4 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
5 true facts about the Affected Vehicles' emissions.

6 279. Defendant also concealed and suppressed material facts concerning what is evidently
7 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
8 compliance with federal and state clean air laws and emissions regulations that are meant to protect
9 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
10 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
11 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
12 environment. And yet, that is precisely what the Affected Vehicles are doing.

13 280. Defendant's false representations were material to consumers because they concerned
14 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
15 state laws and regulations regarding clean air and emissions, and also because the representations
16 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
17 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
18 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

19 281. Defendant had a duty to disclose the emissions defect, defective design of emissions
20 controls, and violations with respect to the Affected Vehicles because details of the true facts were
21 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
22 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
23 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
24 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
25 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
26 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
27 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
28 respect to compliance with federal and state clean air laws and emissions regulations, and

1 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
2 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
3 truth, but the entire truth. These omitted and concealed facts were material because they directly
4 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
5 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
6 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
7 or non-compliance, are material concerns to a consumer, including with respect to the emissions
8 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
9 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
10 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

11 282. Defendant actively concealed and/or suppressed these material facts, in whole or in
12 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
13 vehicles and did not or could not comply with federal and state laws governing clean air and
14 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
15 at the expense of Plaintiff and Subclass members.

16 283. Defendant still has not made full and adequate disclosures, and continues to defraud
17 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
18 of the Affected Vehicles.

19 284. Plaintiff and Subclass members were unaware of the omitted material facts referenced
20 herein, and they would not have acted as they did if they had known of the concealed and/or
21 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
22 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
23 vehicles, or would have taken other affirmative steps in light of the information concealed from
24 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
25 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
26 members.

27 285. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
28 members have sustained damage because they own vehicles that are diminished in value as a result

of Defendant's concealment of the true quality and quantity of those vehicles' emissions and Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

286. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

287. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

288. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

E. Claims Brought on Behalf of the Arizona Subclass

COUNT I

VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT (ARIZ. REV. STAT. § 44-1521 *ET SEQ.*)

289. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

290. Plaintiff brings this Count on behalf of the Arizona Subclass against FCA.

1 291. The Arizona Consumer Fraud Act (“Arizona CFA”) provides that “[t]he act, use or
2 employment by any person of any deception, deceptive act or practice, fraud, ... misrepresentation,
3 or concealment, suppression, or omission of any material fact with intent that others rely upon such
4 concealment, suppression, or omission, in connection with the sale ... of any merchandise whether or
5 not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful
6 practice.” Ariz. Rev. Stat. § 44-1522(A).

7 292. In the course of Defendant’s business, it willfully failed to disclose and actively
8 concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-
10 powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer
11 would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted
12 unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant
13 engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud,
14 misrepresentations, or concealment, suppression, or omission of any material fact with intent that
15 others rely upon such concealment, suppression, or omission, in connection with the sale of Affected
16 Vehicles.

17 293. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
18 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
19 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
20 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
21 including NOx, as described above.

22 294. Plaintiff and Subclass members reasonably relied upon Defendant’s false
23 misrepresentations. They had no way of knowing that Defendant’s representations were false and
24 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
25 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own.

27 295. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.
28

1 296. Defendant's deception, fraud, misrepresentation, concealment, suppression, or
2 omission of material facts were likely to and did in fact deceive reasonable consumers.

3 297. Defendant intentionally and knowingly misrepresented material facts regarding the
4 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

5 298. Defendant knew or should have known that its conduct violated the Arizona CFA.

6 299. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
7 emissions systems manipulation because Defendant:

- 8 a. Possessed exclusive knowledge that it manipulated the emissions system in the
9 Affected Vehicles to turn off or limit effectiveness in normal driving
10 conditions;
11 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
12 c. Made incomplete representations that it manipulated the emissions system in
13 the Affected Vehicles to turn off or limit effectiveness in normal driving
14 conditions, while purposefully withholding material facts from Plaintiff and
15 the Subclass that contradicted these representations.

16 300. Defendant had a duty to disclose that the NOx reduction system in the Affected
17 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
18 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
19 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
20 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
21 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
22 emission vehicles, efficient, and free from defects.

23 301. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
24 members.

25 302. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
26 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
27 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
28

1 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
2 direct and natural consequence of Defendant's misrepresentations and omissions.

3 303. Defendant's violations present a continuing risk to Plaintiff as well as to the general
4 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

5 304. Plaintiff and the Subclass seek monetary relief against Defendant in an amount to be
6 determined at trial. Plaintiff and the Subclass also seek punitive damages because Defendant
7 engaged in aggravated and outrageous conduct with an evil mind.

8 305. Plaintiff also seeks attorneys' fees and any other just and proper relief available.

9 **COUNT II**

10 **FRAUDULENT CONCEALMENT**
11 **(BASED ON ARIZONA LAW)**

12 306. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

13 307. This claim is brought on behalf of the Arizona Subclass against FCA.

14 308. Defendant intentionally concealed that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
16 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
17 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
18 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
19 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
20 and denied Plaintiff and the other Subclass members information that is highly relevant to their
21 purchasing decision.

22 309. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
23 advertising and other forms of communication, including standard and uniform material provided
24 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth friendly
25 and low-emission vehicles, complied with EPA regulations, and would perform and operate properly
26 when driven in normal usage.

27 310. Defendant knew these representations were false when made.

1 311. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
2 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
3 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
4 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions.

6 312. Defendant had a duty to disclose that the NOx reduction system in the Affected
7 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
8 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
9 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
10 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
11 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
12 emission vehicles, efficient, and free from defects.

13 313. As alleged in this Complaint, at all relevant times, Defendant has held out the
14 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
15 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
16 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
17 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "defeat
18 device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
19 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
20 making other disclosures about the emission system deceptive.

21 314. The truth about the defective emissions controls and Defendant's manipulations of
22 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
23 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
24 know of these facts and Defendant actively concealed these facts from Plaintiff and Subclass
25 members.

26 315. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
27 had no way of knowing that Defendant's representations were false and/or misleading. As
28 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on

1 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
2 true facts about the Affected Vehicles' emissions.

3 316. Defendant also concealed and suppressed material facts concerning what is evidently
4 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
5 compliance with federal and state clean air laws and emissions regulations that are meant to protect
6 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
7 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
8 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
9 environment. And yet, that is precisely what the Affected Vehicles are doing.

10 317. Defendant's false representations were material to consumers because they concerned
11 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
12 state laws and regulations regarding clean air and emissions, and also because the representations
13 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
14 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
15 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

16 318. Defendant had a duty to disclose the emissions defect, defective design of emissions
17 controls, and violations with respect to the Affected Vehicles because details of the true facts were
18 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
19 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
20 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
21 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
22 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
23 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
24 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
25 respect to compliance with federal and state clean air laws and emissions regulations, and
26 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
27 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
28 truth, but the entire truth. These omitted and concealed facts were material because they directly

1 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
2 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
3 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
4 or non-compliance, are material concerns to a consumer, including with respect to the emissions
5 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
6 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
7 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

8 319. Defendant actively concealed and/or suppressed these material facts, in whole or in
9 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
10 vehicles and did not or could not comply with federal and state laws governing clean air and
11 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
12 at the expense of Plaintiff and Subclass members.

13 320. Defendant still has not made full and adequate disclosures, and continues to defraud
14 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
15 of the Affected Vehicles.

16 321. Plaintiff and Subclass members were unaware of the omitted material facts referenced
17 herein, and they would not have acted as they did if they had known of the concealed and/or
18 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
19 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
20 vehicles, or would have taken other affirmative steps in light of the information concealed from
21 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
22 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
23 members.

24 322. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
25 members have sustained damage because they own vehicles that are diminished in value as a result
26 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
27 Defendant's failure to timely disclose the defect or defective design of the EcoDiesel engine, the
28 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered

1 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
 2 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
 3 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 4 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 5 or would not have purchased or leased them at all.

6 323. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 7 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 8 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 9 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 10 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 11 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 12 vehicles.

13 324. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 14 amount to be proven at trial.

15 325. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 16 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 17 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 18 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 19 future, which amount is to be determined according to proof.

20 **F. Claims Brought on Behalf of the Arkansas Subclass**

21 **COUNT I**

22 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICE ACT**
 23 **(ARK. CODE ANN. § 4-88-101 ET SEQ.)**

24 326. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 25 herein.

26 327. This claim is brought on behalf of the Arkansas Subclass against FCA.

1 328. Defendant, Plaintiff, and Arkansas Subclass members are “persons” within the
2 meaning of the Arkansas Deceptive Trade Practices Act (“Arkansas DTPA”), Ark. Code Ann. § 4-
3 88-102(5).

4 329. The “Affected Vehicles” are “goods” within the meaning of Ark. Code Ann. § 4-88-
5 102(4).

6 330. The Arkansas DTPA prohibits “[d]eceptive and unconscionable trade practices,”
7 which include, but are not limited to, a list of enumerated items, including “[e]ngaging in any other
8 unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann.
9 § 4-88-107(a)(10). The Arkansas DTPA also prohibits the following when utilized in connection
10 with the sale or advertisement of any goods: “(1) The act, use, or employment by any person of any
11 deception, fraud, or false pretense; or (2) The concealment, suppression, or omission of any material
12 fact with intent that others rely upon the concealment, suppression, or omission.” Ark. Code Ann. §
13 4-88-108.

14 331. In the course of Defendant’s business, Defendant willfully failed to disclose and
15 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
16 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
17 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
18 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
19 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
20 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
21 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
22 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
23 particular standard and quality when they are not; failing to reveal a material fact, the omission of
24 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
25 the consumer; making a representation of fact or statement of fact material to the transaction such
26 that a person reasonably believes the represented or suggested state of affairs to be other than it
27 actually is; and failing to reveal facts that are material to the transaction in light of representations of
28 fact made in a positive manner.

1 332. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
2 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
3 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
4 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
5 including NOx, as described above.

6 333. Plaintiff and Subclass members reasonably relied upon Defendant's false
7 misrepresentations. They had no way of knowing that Defendant's representations were false and
8 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
9 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
10 their own.

11 334. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

12 335. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
13 reasonable consumers.

14 336. Defendant intentionally and knowingly misrepresented material facts regarding the
15 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

16 337. Defendant knew or should have known that its conduct violated the Arkansas DTPA.

17 338. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
18 emissions systems manipulation because Defendant:

- 19 a. Possessed exclusive knowledge that it manipulated the emissions system in the
20 Affected Vehicles to turn off or limit effectiveness in normal driving
21 conditions;
- 22 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 23 c. Made incomplete representations that it manipulated the emissions system in
24 the Affected Vehicles to turn off or limit effectiveness in normal driving
25 conditions, while purposefully withholding material facts from Plaintiff and
26 the Subclass that contradicted these representations.

27 339. Defendant had a duty to disclose that the NOx reduction system in the Affected
28 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were

defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

340. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

341. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

342. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

343. Plaintiff seeks monetary relief measured as the greater of (a) actual damages in an amount to be determined at trial; (b) statutory damages in the amount of \$250 for Plaintiff and each Arkansas Subclass member; (c) reasonable attorneys’ fees; and (d) any other just and proper relief available under Arkansas law. Plaintiff also seeks punitive damages against Defendant because it carried out despicable conduct with willful and conscious disregard of the rights of others.

Defendant’s unlawful conduct constitutes malice, oppression, and fraud warranting punitive damages.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON ARKANSAS LAW)

344. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

345. This claim is brought on behalf of the Arkansas Subclass against FCA.

346. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had

1 defective emissions controls, did not meet and maintain the advertised MPG rate, emitted pollutants
2 at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels
4 of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant
5 acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members
6 information that is highly relevant to their purchasing decision.

7 347. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
8 advertising and other forms of communication, including standard and uniform material provided
9 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
10 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
11 properly when driven in normal usage.

12 348. Defendant knew these representations were false when made.

13 349. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
14 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
15 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
16 advertising campaign, non-EPA-compliant, costly in that Plaintiff and other Subclass members had
17 to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction
18 system in the Affected Vehicles turns off or is limited during normal driving conditions.

19 350. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, did not meet and maintain the advertised MPG rate, employed a "defeat device," emitted
22 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
23 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
24 Plaintiff and the other Subclass members relied on Defendant's material representations that the
25 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
26 defects.

27 351. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
2 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
3 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “defeat
4 device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
5 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
6 making other disclosures about the emission system deceptive.

7 352. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
9 “defeat device,” and non-compliance with EPA emissions requirements was known only to
10 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
11 concealed these facts from Plaintiff and Subclass members.

12 353. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

17 354. Defendant also concealed and suppressed material facts concerning what is evidently
18 the true culture of Defendant—one characterized by an emphasis on profits and sales above
19 compliance with federal and state clean air laws and emissions regulations that are meant to protect
20 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
21 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
22 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
23 environment. And yet, that is precisely what the Affected Vehicles are doing.

24 355. Defendant’s false representations were material to consumers because they concerned
25 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
26 applicable federal and state laws and regulations regarding clean air and emissions, and also because
27 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
28 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were

1 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
2 accordingly.

3 356. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the
5 Affected Vehicles because details of the true facts were known and/or accessible only to Defendant,
6 because Defendant had exclusive knowledge as to such facts, and because Defendant knew these
7 facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Defendant
8 also had a duty to disclose because it made general affirmative representations about the qualities of
9 the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel*
10 *cars* and as compliant with all laws in each state, which were misleading, deceptive, and incomplete
11 without the disclosure of the additional facts set forth above regarding the actual emissions of the
12 vehicles, Defendant's actual philosophy with respect to compliance with federal and state clean air
13 laws and emissions regulations, and Defendant's actual practices with respect to the vehicles at issue.
14 Having volunteered to provide information to Plaintiff and Subclass members, Defendant had the
15 duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were
16 material because they directly impact the value of the Affected Vehicles purchased or leased by
17 Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal
18 and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with
19 respect to such compliance or non-compliance, are material concerns to a consumer, including with
20 respect to the emissions certifications testing their vehicles must pass. Defendant represented to
21 Plaintiff and Subclass members that they were purchasing or leasing reduced-emission diesel
22 vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with
23 unlawfully high emissions.

24 357. Defendant actively concealed and/or suppressed these material facts, in whole or in
25 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
26 vehicles and did not or could not comply with federal and state laws governing clean air and
27 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
28 at the expense of Plaintiff and Subclass members.

1 358. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 359. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 360. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
15 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
16 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
17 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
18 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
19 and compliance with applicable federal and state laws and regulations, and its failure to meet and
20 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
21 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
22 leased them at all.

23 361. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
24 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
25 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
26 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
27 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
28

any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

362. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

363. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

G. Claims Brought on Behalf of the California Subclass

COUNT I

**VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200 *ET SEQ.*)**

364. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

365. This claim is brought on behalf of the California Subclass against FCA.

366. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*, proscribes acts of unfair competition, including "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

367. Defendant's conduct, as described herein, was and is in violation of the UCL. Defendant's conduct violates the UCL in at least the following ways:

- a. By failing to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions;
- b. By selling and leasing Affected Vehicles that suffer from a defective emissions control system and that emit unlawfully high levels of pollutants under normal driving conditions;
- c. By knowingly and intentionally concealing from Plaintiff and the other Subclass members that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected

Vehicles suffer from a defective emissions control system and emit unlawfully high levels of pollutants under normal driving conditions;

- d. By marketing Affected Vehicles as reduced emissions vehicles possessing functional and defect-free, EPA-compliant diesel engine systems;
- e. By advertising and posting a miles per gallon (“MPG”) rate that the Affected Vehicles do not meet and maintain;
- f. By violating federal laws, including the Clean Air Act; and
- g. By violating other California laws, including California consumer protection laws and California laws governing vehicle emissions and emission testing requirements.

368. Defendant intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the Subclass.

369. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Defendant’s failure to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the emissions controls were defective, that the Affected Vehicles would not meet and maintain the advertised MPG rate; and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

370. Plaintiff and Subclass members reasonably relied upon Defendant’s false misrepresentations. They had no way of knowing that Defendant’s representations were false and gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on their own.

371. Defendant knew or should have known that its conduct violated the UCL.

372. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

373. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and that the Affected Vehicles would not meet and maintain their advertised MPG rate, because Plaintiff and the other Subclass members relied on Defendant's material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

374. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass members.

375. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. They also were required to pay more for fuel than they reasonably anticipated based on Defendant's material representations. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

376. Defendant's violations present a continuing risk to Plaintiff as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

377. Defendant's misrepresentations and omissions alleged herein caused Plaintiff and the other Subclass members to make their purchases or leases of their Affected Vehicles. Absent those misrepresentations and omissions, Plaintiff and the other Subclass members would not have purchased or leased these vehicles, would not have purchased or leased Affected Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not contain defective engines that failed to comply with EPA and California emissions standards.

378. Accordingly, Plaintiff and the other Subclass members have suffered injury in fact, including lost money or property, as a result of Defendant's misrepresentations and omissions.

379. Plaintiff request that this Court enter such orders or judgments as may be necessary to restore to Plaintiff and members of the Subclass any money it acquired by unfair competition, including restitution and/or disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Civ. Code § 3345, and for such other relief as may be appropriate.

COUNT II

VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750 *ET SEQ.*)

380. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

381. This claim is brought on behalf of the California Subclass against FCA.

382. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750 *et seq.*, proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

383. The Affected Vehicles are "goods" as defined in Cal. Civ. Code § 1761(a).

384. Plaintiff and the other Subclass members are "consumers" as defined in Cal. Civ. Code § 1761(d), and Plaintiff, Subclass members, and Defendant are "persons" as defined in Cal. Civ. Code § 1761(c).

385. As alleged above, Defendant made representations concerning the benefits, efficiency, performance, and safety features of the Affected Vehicles that were misleading.

1 386. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
2 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
3 Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles
4 were equipped with defective EcoDiesel that failed EPA and California emissions standards, and that
5 the Affected Vehicles would not meet and maintain the advertised MPG rate.

6 387. Defendant's conduct, as described herein, was and is in violation of the CLRA.
7 Defendant's conduct violates at least the following enumerated CLRA provisions:

- 8 a. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of
9 goods.
- 10 b. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another.
- 11 c. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,
12 approval, characteristics, uses, benefits, or quantities which they do not have.
- 13 d. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
14 standard, quality, or grade, if they are of another.
- 15 e. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
16 advertised.
- 17 f. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
18 accordance with a previous representation when they have not.

19 388. Defendant intentionally and knowingly misrepresented material facts regarding the
20 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

21 389. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above. They were also deceived by Defendant's failure to disclose that
26 the Affected Vehicles would not meet and maintain their advertised MPG rate.

27 390. Plaintiff and Subclass members reasonably relied upon Defendant's false
28 misrepresentations. They had no way of knowing that Defendant's representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 391. Defendant knew or should have known that its conduct violated the CLRA.

5 392. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
6 emissions systems manipulation because Defendant:

- 7 a. Possessed exclusive knowledge that it manipulated the emissions system in the
8 Affected Vehicles to turn off or limit effectiveness in normal driving
9 conditions;
- 10 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 11 c. Made incomplete representations that it manipulated the emissions system in
12 the Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions, while purposefully withholding material facts from Plaintiff and
14 the Subclass that contradicted these representations.

15 393. Defendant had a duty to disclose that the NOx reduction system in the Affected
16 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
17 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
18 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, were
19 non-EPA-compliant and unreliable, and would not meet and maintain the Affected Vehicles' posted
20 MPG rate, because Plaintiff and the other Subclass members relied on Defendant's material
21 representations that the Affected Vehicles they were purchasing were reduced-emission vehicles,
22 efficient, and free from defects.

23 394. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
24 members.

25 395. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
26 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
27 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
28 their bargain, and their Affected Vehicles have suffered a diminution in value. They also were

1 required to pay more for fuel than they reasonably anticipated based on Defendant's material
2 representations. These injuries are the direct and natural consequence of Defendant's
3 misrepresentations and omissions.

4 396. Defendant's violations present a continuing risk to Plaintiff as well as to the general
5 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

6 397. Defendant knew, should have known, or was reckless in not knowing of the defective
7 design and/or manufacture of the EcoDiesel engines, and that the Affected Vehicles were not
8 suitable for their intended use.

9 398. The facts concealed and omitted by Defendant from Plaintiff and the other Subclass
10 members are material in that a reasonable consumer would have considered them to be important in
11 deciding whether to purchase or lease the Affected Vehicles or pay a lower price. Had Plaintiff and
12 the other Subclass members known about the defective nature of the Affected Vehicles, and their
13 non-compliance with EPA requirements, and the failure of the Affected Vehicles to meet and
14 maintain their posted MPG rate, they would not have purchased or leased the Affected Vehicles or
15 would not have paid the prices they paid.

16 399. Plaintiff and the Subclass have provided Defendant with notice of their violations of
17 the CLRA pursuant to Cal. Civ. Code § 1782(a).

18 400. Plaintiff's and the other Subclass members' injuries were proximately caused by
19 Defendant's unlawful and deceptive business practices.

20 401. While Plaintiff do not seek to recover damages under the CLRA in this initial
21 Complaint, after mailing appropriate notice and demand in accordance with Cal. Civil Code
22 § 1782(a) & (d), Plaintiff will subsequently amend this Complaint to also include a request for
23 compensatory and punitive damages.

24 **COUNT III**

25 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW** 26 **(CAL. BUS. & PROF. CODE § 17500 *ET SEQ.*)**

27 402. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

28 403. This claim is brought on behalf of the California Subclass against FCA.

1 404. Cal. Bus. & Prof. Code § 17500 states: “It is unlawful for any ... corporation ... with
2 intent directly or indirectly to dispose of real or personal property ... to induce the public to enter
3 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ...
4 from this state before the public in any state, in any newspaper or other publication, or any
5 advertising device, ... or in any other manner or means whatever, including over the Internet, any
6 statement ... which is untrue or misleading, and which is known, or which by the exercise of
7 reasonable care should be known, to be untrue or misleading.”

8 405. Defendant caused to be made or disseminated through California and the U.S.,
9 through advertising, marketing, and other publications, statements that were untrue or misleading,
10 and which were known, or which by the exercise of reasonable care should have been known to
11 Defendant, to be untrue and misleading to consumers, including Plaintiff and the other Subclass
12 members.

13 406. Defendant has violated Cal. Bus. & Prof. Code § 17500 because the
14 misrepresentations and omissions regarding the functionality, reliability, environmental-friendliness,
15 lawfulness, fuel efficiency, and safety of Affected Vehicles as set forth in this Complaint were
16 material and likely to deceive a reasonable consumer.

17 407. Plaintiff and the other Subclass members have suffered injury in fact, including the
18 loss of money or property, as a result of Defendant’s unfair, unlawful, and/or deceptive practices. In
19 purchasing or leasing their Affected Vehicles, Plaintiff and the other Subclass members relied on the
20 misrepresentations and/or omissions of Defendant with respect to the functionality, reliability,
21 environmental-friendliness, fuel efficiency, and lawfulness of the Affected Vehicles. Defendant’s
22 representations turned out not to be true because the NOx reduction system in the Affected Vehicles
23 turns off or is limited during normal driving conditions and the Affected Vehicles are distributed
24 with EcoDiesel engines that include defective emissions controls and a “defeat device.” The
25 Affected Vehicles also do not meet and maintain the posted MPG rate. Had Plaintiff and the other
26 Subclass members known this, they would not have purchased or leased their Affected Vehicles
27 and/or paid as much for them. Accordingly, Plaintiff and the other Subclass members overpaid for
28 their Affected Vehicles and did not receive the benefit of their bargain.

1 415. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
2 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
3 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
4 advertising campaign, non-EPA-compliant, costly in that Plaintiff and other Subclass members had
5 to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction
6 system in the Affected Vehicles turns off or is limited during normal driving conditions.

7 416. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, did not meet and maintain the advertised MPG rate, employed a "defeat device," emitted
10 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
11 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
12 Plaintiff and the other Subclass members relied on Defendant's material representations that the
13 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
14 defects.

15 417. As alleged in this Complaint, at all relevant times, Defendant has held out the
16 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
17 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
18 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
19 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "defeat
20 device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
21 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
22 making other disclosures about the emission system deceptive.

23 418. The truth about the defective emissions controls and Defendant's manipulations of
24 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
25 "defeat device," and non-compliance with EPA emissions requirements was known only to
26 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
27 concealed these facts from Plaintiff and Subclass members.
28

1 419. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
2 had no way of knowing that Defendant's representations were false and/or misleading. As
3 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
4 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
5 true facts about the Affected Vehicles' emissions.

6 420. Defendant also concealed and suppressed material facts concerning what is evidently
7 the true culture of Defendant—one characterized by an emphasis on profits and sales above
8 compliance with federal and state clean air laws and emissions regulations that are meant to protect
9 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
10 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
11 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
12 environment. And yet, that is precisely what the Affected Vehicles are doing.

13 421. Defendant's false representations were material to consumers because they concerned
14 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
15 applicable federal and state laws and regulations regarding clean air and emissions, and also because
16 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
17 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
18 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
19 accordingly.

20 422. Defendant had a duty to disclose the emissions defect, defective design of emissions
21 controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the
22 Affected Vehicles because details of the true facts were known and/or accessible only to Defendant,
23 because Defendant had exclusive knowledge as to such facts, and because Defendant knew these
24 facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Defendant
25 also had a duty to disclose because it made general affirmative representations about the qualities of
26 the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel*
27 *cars* and as compliant with all laws in each state, which were misleading, deceptive, and incomplete
28 without the disclosure of the additional facts set forth above regarding the actual emissions of the

1 vehicles, Defendant's actual philosophy with respect to compliance with federal and state clean air
2 laws and emissions regulations, and Defendant's actual practices with respect to the vehicles at issue.
3 Having volunteered to provide information to Plaintiff and Subclass members, Defendant had the
4 duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were
5 material because they directly impact the value of the Affected Vehicles purchased or leased by
6 Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal
7 and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with
8 respect to such compliance or non-compliance, are material concerns to a consumer, including with
9 respect to the emissions certifications testing their vehicles must pass. Defendant represented to
10 Plaintiff and Subclass members that they were purchasing or leasing reduced-emission diesel
11 vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with
12 unlawfully high emissions.

13 423. Defendant actively concealed and/or suppressed these material facts, in whole or in
14 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
15 vehicles and did not or could not comply with federal and state laws governing clean air and
16 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
17 at the expense of Plaintiff and Subclass members.

18 424. Defendant still has not made full and adequate disclosures, and continues to defraud
19 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
20 of the Affected Vehicles.

21 425. Plaintiff and Subclass members were unaware of the omitted material facts referenced
22 herein, and they would not have acted as they did if they had known of the concealed and/or
23 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
24 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
25 vehicles, or would have taken other affirmative steps in light of the information concealed from
26 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
27 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
28 members.

1 426. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
2 members have sustained damage because they own vehicles that are diminished in value as a result
3 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
4 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
5 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
6 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
7 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
8 and compliance with applicable federal and state laws and regulations, and its failure to meet and
9 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
10 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
11 leased them at all.

12 427. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
13 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
14 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
15 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
16 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
17 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
18 vehicles.

19 428. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
20 amount to be proven at trial.

21 429. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
22 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
23 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
24 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
25 future, which amount is to be determined according to proof.

H. Claims Brought on Behalf of the Colorado Subclass

COUNT I

**VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT
(COLO. REV. STAT. § 6-1-101 *ET SEQ.*)**

430. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

431. Plaintiff brings this Count on behalf of the Colorado Subclass against FCA.

432. Colorado's Consumer Protection Act (the "Colorado CPA") prohibits a person from engaging in a "deceptive trade practice," which includes knowingly making "a false representation as to the source, sponsorship, approval, or certification of goods," or "a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods." Colo. Rev. Stat. § 6-1-105(1)(b), (e). The Colorado CPA further prohibits "represent[ing] that goods ... are of a particular standard, quality, or grade ... if he knows or should know that they are of another," and "advertis[ing] goods ... with intent not to sell them as advertised." Colo. Rev. Stat. § 6-1-105(1)(g), (i).

433. Defendant is a "person" under § 6-1-102(6) of the Colorado CPA, Colo. Rev. Stat. § 6-1-101 *et seq.*

434. Plaintiff and Colorado Subclass members are "consumers" for the purpose of Colo. Rev. Stat. § 6-1-113(1)(a) who purchased or leased one or more Affected Vehicles.

435. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of

1 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
2 the consumer; making a representation of fact or statement of fact material to the transaction such
3 that a person reasonably believes the represented or suggested state of affairs to be other than it
4 actually is; and failing to reveal facts that are material to the transaction in light of representations of
5 fact made in a positive manner.

6 436. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
7 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
9 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
10 including NOx, as described above.

11 437. Plaintiff and Subclass members reasonably relied upon Defendant's false
12 misrepresentations. They had no way of knowing that Defendant's representations were false and
13 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
14 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
15 their own.

16 438. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

17 439. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
18 reasonable consumers.

19 440. Defendant intentionally and knowingly misrepresented material facts regarding the
20 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

21 441. Defendant knew or should have known that its conduct violated the Colorado CPA.

22 442. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
23 emissions systems manipulation because Defendant:

24 a. Possessed exclusive knowledge that it manipulated the emissions system in the
25 Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions;

27 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
28

1 c. Made incomplete representations that it manipulated the emissions system in
2 the Affected Vehicles to turn off or limit effectiveness in normal driving
3 conditions, while purposefully withholding material facts from Plaintiff and
4 the Subclass that contradicted these representations.

5 443. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 444. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 445. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 446. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 447. Pursuant to Colo. Rev. Stat. § 6-1-113, Plaintiff and the Subclass seek monetary relief
22 against Defendant measured as the greater of (a) actual damages in an amount to be determined at
23 trial and the discretionary trebling of such damages, or (b) statutory damages in the amount of \$500
24 for Plaintiff and each Subclass member.

25 448. Plaintiff and the Subclass also seek declaratory relief, attorneys’ fees, and any other
26 just and proper relief available under the Colorado CPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON COLORADO LAW)**

449. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

450. Plaintiff brings this Count on behalf of the Colorado Subclass against FCA.

451. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

452. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

453. Defendant knew these representations were false when made.

454. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

455. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 456. As alleged in this Complaint, at all relevant times, Defendant has held out the
5 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
6 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
7 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
8 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
9 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
10 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
11 making other disclosures about the emission system deceptive.

12 457. The truth about the defective emissions controls and Defendant's manipulations of
13 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
14 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
15 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
16 members.

17 458. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
18 had no way of knowing that Defendant's representations were false and/or misleading. As
19 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
21 true facts about the Affected Vehicles' emissions.

22 459. Defendant also concealed and suppressed material facts concerning what is evidently
23 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
24 compliance with federal and state clean air laws and emissions regulations that are meant to protect
25 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
26 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
27 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
28 environment. And yet, that is precisely what the Affected Vehicles are doing.

1 460. Defendant's false representations were material to consumers because they concerned
2 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
3 state laws and regulations regarding clean air and emissions, and also because the representations
4 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
5 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
6 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

7 461. Defendant had a duty to disclose the emissions defect, defective design of emissions
8 controls, and violations with respect to the Affected Vehicles because details of the true facts were
9 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
10 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
11 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
12 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
13 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
14 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
15 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
16 respect to compliance with federal and state clean air laws and emissions regulations, and
17 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
18 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
19 truth, but the entire truth. These omitted and concealed facts were material because they directly
20 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
21 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
22 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
23 or non-compliance, are material concerns to a consumer, including with respect to the emissions
24 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
25 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
26 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

27 462. Defendant actively concealed and/or suppressed these material facts, in whole or in
28 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel

1 vehicles and did not or could not comply with federal and state laws governing clean air and
2 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
3 at the expense of Plaintiff and Subclass members.

4 463. Defendant still has not made full and adequate disclosures, and continues to defraud
5 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
6 of the Affected Vehicles.

7 464. Plaintiff and Subclass members were unaware of the omitted material facts referenced
8 herein, and they would not have acted as they did if they had known of the concealed and/or
9 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
10 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
11 vehicles, or would have taken other affirmative steps in light of the information concealed from
12 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
13 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
14 members.

15 465. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
16 members have sustained damage because they own vehicles that are diminished in value as a result
17 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
18 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
19 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
20 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
21 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
22 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
23 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
24 or would not have purchased or leased them at all.

25 466. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
26 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
27 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
28 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to

1 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 2 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 3 vehicles.

4 467. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 5 amount to be proven at trial.

6 468. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 7 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 8 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 9 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 10 future, which amount is to be determined according to proof.

11 **I. Claims Brought on Behalf of the Connecticut Subclass**

12 **COUNT I**

13 **VIOLATIONS OF THE CONNECTICUT UNFAIR** 14 **TRADE PRACTICES ACT** **(CONN. GEN. STAT. ANN. § 42-110A ET SEQ.)**

15 469. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

16 470. Plaintiff brings this Count on behalf of the Connecticut Subclass against FCA.

17 471. Defendant and Plaintiff are each "persons" as defined by Conn. Gen. Stat. Ann. § 42-
 18 110a(3).

19 472. The Connecticut Unfair Trade Practices Act ("Connecticut UTPA") provides that
 20 "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices
 21 in the conduct of any trade or commerce." Conn. Gen. Stat. Ann. § 42-110b(a). The Connecticut
 22 UTPA further provides a private right of action under Conn. Gen. Stat. Ann. § 42-110g(a). In the
 23 course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the
 24 NOx reduction system in the Affected Vehicles turns off or is limited during normal driving
 25 conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles,
 26 that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light
 27 of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels
 28 of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair and

1 deceptive trade practices because its conduct (1) offends public policy as it has been established by
2 statutes, the common law or other established concept of unfairness; (2) is immoral, unethical,
3 oppressive, or unscrupulous; or (3) causes substantial injury to consumers, competitors, or other
4 business persons. The harm caused to consumers, motorists, and pedestrians outweighs any benefit
5 associated with such practices, and Defendant fraudulently concealed the defective nature of the
6 Affected Vehicles from consumers.

7 473. Defendant has also engaged in deceptive conduct because (1) it made representations,
8 omissions, or engaged in other conduct likely to mislead consumers; (2) consumers interpret the
9 message reasonably under the circumstances; and (3) the misleading representation, omission, or
10 practice is material—that is, likely to affect consumer decisions or conduct.

11 474. In the course of Defendant's business, Defendant willfully failed to disclose and
12 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
13 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
14 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
15 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
16 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
17 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
18 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
19 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
20 particular standard and quality when they are not; failing to reveal a material fact, the omission of
21 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
22 the consumer; making a representation of fact or statement of fact material to the transaction such
23 that a person reasonably believes the represented or suggested state of affairs to be other than it
24 actually is; and failing to reveal facts that are material to the transaction in light of representations of
25 fact made in a positive manner.

26 475. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
27 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

476. Plaintiff and Subclass members reasonably relied upon Defendant's false misrepresentations. They had no way of knowing that Defendant's representations were false and gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on their own.

477. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

478. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

479. Defendant intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the Subclass.

480. Defendant knew or should have known that its conduct violated the Connecticut UTPA.

481. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

482. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 483. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 484. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
7 injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and
8 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
9 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
10 direct and natural consequence of Defendant's misrepresentations and omissions.

11 485. Defendant's violations present a continuing risk to Plaintiff as well as to the general
12 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

13 486. Plaintiff and the other Subclass members sustained damages as a result of Defendant's
14 unlawful acts, and are therefore entitled to damages and other relief as provided under the
15 Connecticut UTPA.

16 487. Plaintiff also seeks court costs and attorneys' fees as a result of Defendant's violation
17 of the Connecticut UTPA as provided in Conn. Gen. Stat. Ann. § 42-110g(d). A copy of this
18 Complaint has been mailed to the Attorney General and the Commissioner of Consumer Protection
19 of the State of Connecticut in accordance with Conn. Gen. Stat. Ann. § 42-110g(c).

20 **COUNT II**

21 **FRAUDULENT NON-DISCLOSURE** 22 **(BASED ON CONNECTICUT LAW)**

23 488. Plaintiff incorporates by reference all preceding allegations as though fully set forth
24 herein.

25 489. Plaintiff brings this Count on behalf of the Connecticut Subclass against FCA.

26 490. Defendant intentionally concealed that the NOx reduction system in the Affected
27 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
28 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,

1 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
2 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
3 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
4 and denied Plaintiff and the other Subclass members information that is highly relevant to their
5 purchasing decision.

6 491. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
7 advertising and other forms of communication, including standard and uniform material provided
8 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
9 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
10 properly when driven in normal usage.

11 492. Defendant knew these representations were false when made.

12 493. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
13 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
14 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
15 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions.

17 494. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 495. As alleged in this Complaint, at all relevant times, Defendant has held out the
25 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
26 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
27 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
28 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a

1 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
2 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
3 making other disclosures about the emission system deceptive.

4 496. The truth about the defective emissions controls and Defendant’s manipulations of
5 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
6 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
7 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
8 members.

9 497. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
10 had no way of knowing that Defendant’s representations were false and/or misleading. As
11 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
12 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
13 true facts about the Affected Vehicles’ emissions.

14 498. Defendant also concealed and suppressed material facts concerning what is evidently
15 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
16 compliance with federal and state clean air laws and emissions regulations that are meant to protect
17 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
18 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
19 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
20 environment. And yet, that is precisely what the Affected Vehicles are doing.

21 499. Defendant’s false representations were material to consumers because they concerned
22 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
23 state laws and regulations regarding clean air and emissions, and also because the representations
24 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
25 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
26 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

27 500. Defendant had a duty to disclose the emissions defect, defective design of emissions
28 controls, and violations with respect to the Affected Vehicles because details of the true facts were

1 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
2 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
3 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
4 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
5 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
6 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
7 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
8 respect to compliance with federal and state clean air laws and emissions regulations, and
9 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
10 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
11 truth, but the entire truth. These omitted and concealed facts were material because they directly
12 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
13 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
14 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
15 or non-compliance, are material concerns to a consumer, including with respect to the emissions
16 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
17 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
18 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

19 501. Defendant actively concealed and/or suppressed these material facts, in whole or in
20 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
21 vehicles and did not or could not comply with federal and state laws governing clean air and
22 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
23 at the expense of Plaintiff and Subclass members.

24 502. Defendant still has not made full and adequate disclosures, and continues to defraud
25 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
26 of the Affected Vehicles.

27 503. Plaintiff and Subclass members were unaware of the omitted material facts referenced
28 herein, and they would not have acted as they did if they had known of the concealed and/or

1 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
2 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
3 vehicles, or would have taken other affirmative steps in light of the information concealed from
4 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
5 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
6 members.

7 504. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
8 members have sustained damage because they own vehicles that are diminished in value as a result
9 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
10 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
11 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
12 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
13 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
14 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
15 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
16 or would not have purchased or leased them at all.

17 505. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 506. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 507. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

J. Claims Brought on Behalf of the Delaware Subclass

COUNT I

**VIOLATIONS OF THE DELAWARE CONSUMER FRAUD ACT
(DEL. CODE § 2513 ET SEQ.)**

508. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

509. Plaintiff brings this Count on behalf of the Delaware Subclass against FCA.

510. Defendant is a “person” within the meaning of 6 Del. Code § 2511(7).

511. The Delaware Consumer Fraud Act (“Delaware CFA”) prohibits the “act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.” 6 Del. Code § 2513(a). In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaigns, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant has engaged in deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale, lease or advertisement of the Affected Vehicles.

512. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable

1 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
2 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
3 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
4 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
5 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
6 particular standard and quality when they are not; failing to reveal a material fact, the omission of
7 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
8 the consumer; making a representation of fact or statement of fact material to the transaction such
9 that a person reasonably believes the represented or suggested state of affairs to be other than it
10 actually is; and failing to reveal facts that are material to the transaction in light of representations of
11 fact made in a positive manner.

12 513. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
13 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
14 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
15 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
16 including NOx, as described above.

17 514. Plaintiff and Subclass members reasonably relied upon Defendant's false
18 misrepresentations. They had no way of knowing that Defendant's representations were false and
19 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
20 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own.

22 515. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

23 516. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
24 reasonable consumers.

25 517. Defendant intentionally and knowingly misrepresented material facts regarding the
26 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

27 518. Defendant knew or should have known that its conduct violated the Delaware CFA.
28

1 519. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
2 emissions systems manipulation because Defendant:

- 3 a. Possessed exclusive knowledge that it manipulated the emissions system in the
4 Affected Vehicles to turn off or limit effectiveness in normal driving
5 conditions;
6 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
7 c. Made incomplete representations that it manipulated the emissions system in
8 the Affected Vehicles to turn off or limit effectiveness in normal driving
9 conditions, while purposefully withholding material facts from Plaintiff and
10 the Subclass that contradicted these representations.

11 520. Defendant had a duty to disclose that the NOx reduction system in the Affected
12 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
13 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
14 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
15 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
16 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
17 emission vehicles, efficient, and free from defects.

18 521. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
19 members.

20 522. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
21 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
22 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
23 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
24 direct and natural consequence of Defendant’s misrepresentations and omissions.

25 523. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

27 524. Plaintiff seeks damages under the Delaware CFA for injury resulting from the direct
28 and natural consequences of Defendant’s unlawful conduct. *See, e.g., Stephenson v. Capano Dev.,*

1 *Inc.*, 462 A.2d 1069, 1077 (Del. 1983). Plaintiff also seeks declaratory relief, attorneys' fees, and
2 any other just and proper relief available under the Delaware CFA.

3 525. Defendant engaged in gross, oppressive, or aggravated conduct justifying the
4 imposition of punitive damages.

5 **COUNT II**

6 **FRAUDULENT CONCEALMENT**
7 **(BASED ON DELAWARE LAW)**

8 526. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

9 527. Plaintiff brings this Count on behalf of the Delaware Subclass against FCA.

10 528. Defendant intentionally concealed that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
12 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
13 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
14 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
15 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
16 and denied Plaintiff and the other Subclass members information that is highly relevant to their
17 purchasing decision.

18 529. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
19 advertising and other forms of communication, including standard and uniform material provided
20 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
21 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
22 properly when driven in normal usage.

23 530. Defendant knew these representations were false when made.

24 531. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
25 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
26 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
27 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions.

1 532. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 533. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 534. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 535. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 536. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—one characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 537. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 538. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of its vehicles with respect to emissions, starting with
17 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

1 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
2 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

3 539. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that the Affected Vehicles were not
5 clean diesel vehicles and did not or could not comply with federal and state laws governing clean air
6 and emissions, which perception would hurt the brand's image and cost Defendant money, and it did
7 so at the expense of Plaintiff and Subclass members.

8 540. Defendant has still not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 541. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 542. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of the vehicles, and the serious issues engendered by
24 Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

543. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, of the unlawfully high emissions of the Affected Vehicles, and of the non-compliance with EPA emissions requirements, all of which has greatly tarnished the brand name attached to Plaintiff's and Subclass members' vehicles and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

544. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

545. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

K. Claims Brought on Behalf of the District of Columbia Subclass

COUNT I

**VIOLATION OF THE CONSUMER PROTECTION
PROCEDURES ACT
(D.C. CODE § 28-3901 *ET SEQ.*)**

546. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

547. Plaintiff brings this Count on behalf of the D.C. Subclass against FCA.

548. Defendant is a "person" under the Consumer Protection Procedures Act ("District of Columbia CPPA"), D.C. Code § 28-3901(a)(1).

549. Subclass members are "consumers," as defined by D.C. Code § 28-3901(1)(2), who purchased or leased one or more Affected Vehicles.

550. Defendant's actions as set forth herein constitute "trade practices" under D.C. Code § 28-3901.

551. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
6 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
7 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
8 particular standard and quality when they are not; failing to reveal a material fact, the omission of
9 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
10 the consumer; making a representation of fact or statement of fact material to the transaction such
11 that a person reasonably believes the represented or suggested state of affairs to be other than it
12 actually is; and failing to reveal facts that are material to the transaction in light of representations of
13 fact made in a positive manner.

14 552. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 553. Plaintiff and Subclass members reasonably relied upon Defendant's false
20 misrepresentations. They had no way of knowing that Defendant's representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
23 their own.

24 554. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

25 555. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 556. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 557. Defendant knew or should have known that its conduct violated the District of
2 Columbia CPPA.

3 558. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
4 emissions systems manipulation because Defendant:

- 5 a. Possessed exclusive knowledge that it manipulated the emissions system in the
6 Affected Vehicles to turn off or limit effectiveness in normal driving
7 conditions;
- 8 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 9 c. Made incomplete representations that it manipulated the emissions system in
10 the Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions, while purposefully withholding material facts from Plaintiff and
12 the Subclass that contradicted these representations.

13 559. Defendant had a duty to disclose that the NOx reduction system in the Affected
14 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
15 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
16 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
17 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
18 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
19 emission vehicles, efficient, and free from defects.

20 560. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
21 members.

22 561. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
23 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

24 562. As a direct and proximate result of Defendant’s violations of the District of Columbia
25 CPPA, Plaintiff and D.C. Subclass members have suffered injury in fact and/or actual damage.

26 563. Plaintiff and D.C. Subclass members are entitled to recover treble damages or \$1,500,
27 whichever is greater, punitive damages, reasonable attorneys’ fees, and any other relief the Court
28 deems proper, under D.C. Code § 28-3901.

1 advertising campaign, non-EPA-compliant, costly in that Plaintiff and other Subclass members had
2 to pay more for fuel than they reasonably expected, and unreliable because the NOx reduction
3 system in the Affected Vehicles turns off or is limited during normal driving conditions.

4 572. Defendant had a duty to disclose that the NOx reduction system in the Affected
5 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
6 defective, did not meet and maintain the advertised MPG rate, employed a “defeat device,” emitted
7 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
8 those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because
9 Plaintiff and the other Subclass members relied on Defendant’s material representations that the
10 Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from
11 defects.

12 573. As alleged in this Complaint, at all relevant times, Defendant has held out the
13 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
14 details about its EcoDiesel, but nonetheless, Defendant intentionally failed to disclose the important
15 facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal
16 driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a “defeat
17 device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
18 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
19 making other disclosures about the emission system deceptive.

20 574. The truth about the defective emissions controls and Defendant’s manipulations of
21 those controls, failure to meet and maintain the advertised MPG rate, unlawfully high emissions, the
22 “defeat device,” and non-compliance with EPA emissions requirements was known only to
23 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
24 concealed these facts from Plaintiff and Subclass members.

25 575. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
26 had no way of knowing that Defendant’s representations were false and/or misleading. As
27 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
28

1 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
2 true facts about the Affected Vehicles' emissions.

3 576. Defendant also concealed and suppressed material facts concerning what is evidently
4 the true culture of Defendant—one characterized by an emphasis on profits and sales above
5 compliance with federal and state clean air laws and emissions regulations that are meant to protect
6 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
7 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
8 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
9 environment. And yet, that is precisely what the Affected Vehicles are doing.

10 577. Defendant's false representations were material to consumers because they concerned
11 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
12 applicable federal and state laws and regulations regarding clean air and emissions, and also because
13 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
14 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
15 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
16 accordingly.

17 578. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, failure to meet and maintain the advertised MPG rate, and violations with respect to the
19 Affected Vehicles because details of the true facts were known and/or accessible only to Defendant,
20 because Defendant had exclusive knowledge as to such facts, and because Defendant knew these
21 facts were not known to or reasonably discoverable by Plaintiff or Subclass members. Defendant
22 also had a duty to disclose because it made general affirmative representations about the qualities of
23 the vehicles with respect to emissions, starting with references to them as *reduced-emissions diesel*
24 *cars* and as compliant with all laws in each state, which were misleading, deceptive, and incomplete
25 without the disclosure of the additional facts set forth above regarding the actual emissions of the
26 vehicles, Defendant's actual philosophy with respect to compliance with federal and state clean air
27 laws and emissions regulations, and Defendant's actual practices with respect to the vehicles at issue.
28 Having volunteered to provide information to Plaintiff and Subclass members, Defendant had the

1 duty to disclose not just the partial truth, but the entire truth. These omitted and concealed facts were
2 material because they directly impact the value of the Affected Vehicles purchased or leased by
3 Plaintiff and Subclass members. Whether a manufacturer's products pollute, comply with federal
4 and state clean air laws and emissions regulations, and whether that manufacturer tells the truth with
5 respect to such compliance or non-compliance, are material concerns to a consumer, including with
6 respect to the emissions certifications testing their vehicles must pass. Defendant represented to
7 Plaintiff and Subclass members that they were purchasing or leasing reduced-emission diesel
8 vehicles when, in fact, they were purchasing or leasing defective, high-emission vehicles with
9 unlawfully high emissions.

10 579. Defendant actively concealed and/or suppressed these material facts, in whole or in
11 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
12 vehicles and did not or could not comply with federal and state laws governing clean air and
13 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
14 at the expense of Plaintiff and Subclass members.

15 580. Defendant still has not made full and adequate disclosures, and continues to defraud
16 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
17 of the Affected Vehicles.

18 581. Plaintiff and Subclass members were unaware of the omitted material facts referenced
19 herein, and they would not have acted as they did if they had known of the concealed and/or
20 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
21 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
22 vehicles, or would have taken other affirmative steps in light of the information concealed from
23 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
24 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
25 members.

26 582. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
27 members have sustained damage because they own vehicles that are diminished in value as a result
28 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel

1 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
 2 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
 3 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
 4 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
 5 and compliance with applicable federal and state laws and regulations, and its failure to meet and
 6 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or
 7 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
 8 leased them at all.

9 583. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 10 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 11 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 12 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 13 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 14 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 15 vehicles.

16 584. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 17 amount to be proven at trial.

18 585. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 19 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 20 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 21 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 22 future, which amount is to be determined according to proof.

23 **L. Claims Brought on Behalf of the Florida Subclass**

24 **COUNT I**

25 **VIOLATIONS OF THE FLORIDA UNFAIR AND DECEPTIVE TRADE**
 26 **PRACTICES ACT**
(FLA. STAT. § 501.201 ET SEQ.)

27 586. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 28 herein.

1 587. Plaintiff brings this Count on behalf of the Florida Subclass against FCA.

2 588. Plaintiff and Subclass members are “consumers” within the meaning of Florida Unfair
3 and Deceptive Trade Practices Act (“Florida UDTPA”), Fla. Stat. § 501.203(7).

4 589. Defendant engaged in “trade or commerce” within the meaning of Fla. Stat.
5 § 501.203(8).

6 590. Florida’s Deceptive and Unfair Trade Practices Act prohibits “[u]nfair methods of
7 competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct
8 of any trade or commerce.” Fla. Stat. § 501.204(1). Defendant participated in unfair and deceptive
9 trade practices that violated the Florida UDTPA as described herein. In the course of Defendant’s
10 business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system
11 in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected
12 Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit
13 far more pollution than a reasonable consumer would expect in light of Defendant’s advertising
14 campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including
15 NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition,
16 unconscionable acts or practices, and unfair or deceptive acts or practices as defined in Fla. Stat.
17 § 501.204(1). Defendant’s conduct offends established public policy, is immoral, unethical,
18 oppressive, unscrupulous, or substantially injurious to consumers, and is likely to mislead
19 consumers.

20 591. In the course of Defendant’s business, Defendant willfully failed to disclose and
21 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
22 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
23 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
24 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
25 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
26 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
27 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
28 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a

1 particular standard and quality when they are not; failing to reveal a material fact, the omission of
2 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
3 the consumer; making a representation of fact or statement of fact material to the transaction such
4 that a person reasonably believes the represented or suggested state of affairs to be other than it
5 actually is; and failing to reveal facts that are material to the transaction in light of representations of
6 fact made in a positive manner.

7 592. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
8 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
10 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
11 including NOx, as described above.

12 593. Plaintiff and Subclass members reasonably relied upon Defendant's false
13 misrepresentations. They had no way of knowing that Defendant's representations were false and
14 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
15 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
16 their own.

17 594. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

18 595. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
19 reasonable consumers.

20 596. Defendant intentionally and knowingly misrepresented material facts regarding the
21 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

22 597. Defendant knew or should have known that its conduct violated the Florida UDTPA.

23 598. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
24 emissions systems manipulation because Defendant:

- 25 a. Possessed exclusive knowledge that it manipulated the emissions system in the
26 Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions;
28 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

1 c. Made incomplete representations that it manipulated the emissions system in
2 the Affected Vehicles to turn off or limit effectiveness in normal driving
3 conditions, while purposefully withholding material facts from Plaintiff and
4 the Subclass that contradicted these representations.

5 599. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 600. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 601. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 602. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 603. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 **COUNT II**

24 **FRAUDULENT CONCEALMENT**
25 **(BASED ON FLORIDA LAW)**

26 604. Plaintiff incorporates by reference all preceding allegations as though fully set forth
27 herein.

28 605. Plaintiff brings this Count on behalf of the Florida Subclass against FCA.

1 606. Defendant intentionally concealed that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
3 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
4 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
5 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
6 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
7 and denied Plaintiff and the other Subclass members information that is highly relevant to their
8 purchasing decision.

9 607. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
10 advertising and other forms of communication, including standard and uniform material provided
11 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
12 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
13 properly when driven in normal usage.

14 608. Defendant knew these representations were false when made.

15 609. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
16 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
17 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
18 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
19 Affected Vehicles turns off or is limited during normal driving conditions.

20 610. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 611. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
2 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
3 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
4 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
5 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
6 making other disclosures about the emission system deceptive.

7 612. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
9 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
10 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
11 members.

12 613. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

17 614. Defendant also concealed and suppressed material facts concerning what is evidently
18 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
19 compliance with federal and state clean air laws and emissions regulations that are meant to protect
20 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
21 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
22 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
23 environment. And yet, that is precisely what the Affected Vehicles are doing.

24 615. Defendant’s false representations were material to consumers because they concerned
25 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
26 state laws and regulations regarding clean air and emissions, and also because the representations
27 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
28

1 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
2 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

3 616. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, and violations with respect to the Affected Vehicles because details of the true facts were
5 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
6 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
7 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
8 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
9 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
10 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
11 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
12 respect to compliance with federal and state clean air laws and emissions regulations, and
13 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
14 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
15 truth, but the entire truth. These omitted and concealed facts were material because they directly
16 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
17 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
18 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
19 or non-compliance, are material concerns to a consumer, including with respect to the emissions
20 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
21 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
22 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

23 617. Defendant actively concealed and/or suppressed these material facts, in whole or in
24 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
25 vehicles and did not or could not comply with federal and state laws governing clean air and
26 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
27 at the expense of Plaintiff and Subclass members.

1 618. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 619. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 620. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 621. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 622. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

3 623. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
5 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
6 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
7 future, which amount is to be determined according to proof.

8 **M. Claims Brought on Behalf of the Georgia Subclass**

9 **COUNT I**

10 **VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT**
11 **(GA. CODE ANN. § 10-1-390 ET SEQ.)**

12 624. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 625. This claim is made on behalf of the Georgia Subclass against FCA.

15 626. The Georgia Fair Business Practices Act ("Georgia FBPA") declares "[u]nfair or
16 deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in
17 trade or commerce" to be unlawful, Ga. Code. Ann. § 10-1-393(a), including, but not limited to,
18 "representing that goods or services have sponsorship, approval, characteristics, ingredients, uses,
19 benefits, or quantities that they do not have," "[r]epresenting that goods or services are of a particular
20 standard, quality, or grade ... if they are of another," and "[a]dvertising goods or services with intent
21 not to sell them as advertised." Ga. Code. Ann. § 10-1-393(b). Plaintiff will make a demand in
22 satisfaction of Ga. Code. Ann. § 10-1-399(b), and may amend this Complaint to assert claims under
23 the Georgia FBPA once the required notice period has elapsed. This paragraph is included for
24 purposes of notice only and is not intended to actually assert a claim under the Georgia FBPA.

25 **COUNT II**

26 **FRAUDULENT CONCEALMENT**
(BASED ON GEORGIA LAW)

27 627. Plaintiff incorporates by reference all preceding allegations as though fully set forth
28 herein.

1 628. This claim is brought on behalf of the Georgia Subclass against FCA.

2 629. Defendant intentionally concealed that the NOx reduction system in the Affected
3 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
4 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
5 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
6 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
7 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
8 and denied Plaintiff and the other Subclass members information that is highly relevant to their
9 purchasing decision.

10 630. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
11 advertising and other forms of communication, including standard and uniform material provided
12 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
13 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
14 properly when driven in normal usage.

15 631. Defendant knew these representations were false when made.

16 632. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
17 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
18 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
19 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
20 Affected Vehicles turns off or is limited during normal driving conditions.

21 633. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 634. As alleged in this Complaint, at all relevant times, Defendant has held out the
2 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
3 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
4 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
5 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
6 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
7 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
8 making other disclosures about the emission system deceptive.

9 635. The truth about the defective emissions controls and Defendant’s manipulations of
10 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
11 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
12 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
13 members.

14 636. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
15 had no way of knowing that Defendant’s representations were false and/or misleading. As
16 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
17 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
18 true facts about the Affected Vehicles’ emissions.

19 637. Defendant also concealed and suppressed material facts concerning what is evidently
20 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
21 compliance with federal and state clean air laws and emissions regulations that are meant to protect
22 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
23 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
24 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
25 environment. And yet, that is precisely what the Affected Vehicles are doing.

26 638. Defendant’s false representations were material to consumers because they concerned
27 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
28 state laws and regulations regarding clean air and emissions, and also because the representations

1 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
2 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
3 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

4 639. Defendant had a duty to disclose the emissions defect, defective design of emissions
5 controls, and violations with respect to the Affected Vehicles because details of the true facts were
6 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
7 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
8 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
9 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
10 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
11 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
12 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
13 respect to compliance with federal and state clean air laws and emissions regulations, and
14 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
15 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
16 truth, but the entire truth. These omitted and concealed facts were material because they directly
17 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
18 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
20 or non-compliance, are material concerns to a consumer, including with respect to the emissions
21 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
22 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
23 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

24 640. Defendant actively concealed and/or suppressed these material facts, in whole or in
25 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
26 vehicles and did not or could not comply with federal and state laws governing clean air and
27 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
28 at the expense of Plaintiff and Subclass members.

1 641. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 642. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 643. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 644. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 645. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

3 646. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
5 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
6 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
7 future, which amount is to be determined according to proof.

8 **N. Claims Brought on Behalf of the Hawaii Subclass**

9 **COUNT I**

10 **UNFAIR AND DECEPTIVE ACTS IN VIOLATION OF HAWAII LAW**
11 **(HAW. REV. STAT. § 480 ET SEQ.)**

12 556. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 557. This claim is brought on behalf of the Hawaii Subclass against FCA.

15 569. Defendant is a "person" under Haw. Rev. Stat. § 480-1.

16 570. Subclass members are "consumer[s]" as defined by Haw. Rev. Stat. § 480-1, who
17 purchased or leased one or more Affected Vehicles.

18 571. Defendant's acts or practices as set forth above occurred in the conduct of trade or
19 commerce.

20 572. Haw. Rev. Stat. § 480-2(a) prohibits "unfair methods of competition and unfair or
21 deceptive acts or practices in the conduct of any trade or commerce."

22 647. In the course of Defendant's business, Defendant willfully failed to disclose and
23 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
24 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
25 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
26 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
27 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
28 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or

1 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
2 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
3 particular standard and quality when they are not; failing to reveal a material fact, the omission of
4 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
5 the consumer; making a representation of fact or statement of fact material to the transaction such
6 that a person reasonably believes the represented or suggested state of affairs to be other than it
7 actually is; and failing to reveal facts that are material to the transaction in light of representations of
8 fact made in a positive manner.

9 648. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
10 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
12 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
13 including NOx, as described above.

14 649. Plaintiff and Subclass members reasonably relied upon Defendant's false
15 misrepresentations. They had no way of knowing that Defendant's representations were false and
16 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
17 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
18 their own.

19 650. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

20 651. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
21 reasonable consumers.

22 652. Defendant intentionally and knowingly misrepresented material facts regarding the
23 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

24 653. Defendant knew or should have known that its conduct violated Haw. Rev. Stat. § 480
25 *et seq.*

26 654. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
27 emissions systems manipulation because Defendant:
28

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

655. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

656. Pursuant to Haw. Rev. Stat. § 480-13, Plaintiff and the Hawaii Subclass seek monetary relief against Defendant measured as the greater of (a) \$1,000 and (b) threefold actual damages in an amount to be determined at trial.

657. Under Haw. Rev. Stat. § 480-13.5, Plaintiff seeks an additional award against Defendant of up to \$10,000 for each violation directed at a Hawaiian elder. Defendant knew or should have known that its conduct was directed to one or more Subclass members who are elders. Defendant’s conduct caused one or more of these elders to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the elder. One or more Hawaii Subclass members who are elders are substantially more vulnerable to Defendant’s conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from Defendant’s conduct.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON HAWAII LAW)**

658. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

659. This claim is brought on behalf of the Hawaii Subclass against FCA.

660. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

661. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

662. Defendant knew these representations were false when made.

663. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

664. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 665. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 666. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 667. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 668. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 669. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 670. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 671. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 672. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 673. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 674. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 675. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 676. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 677. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **O. Claims Brought on Behalf of the Idaho Subclass**

14 **COUNT I**

15 **VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT**
16 **(IDAHO CODE § 48-601 ET SEQ.)**

17 678. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

18 679. Plaintiff brings this Count on behalf of the Idaho Subclass against FCA.

19 680. Defendant is a "person" under the Idaho Consumer Protection Act ("Idaho CPA"),
20 Idaho Code § 48-602(1).

21 681. Defendant's acts or practices as set forth above occurred in the conduct of "trade" or
22 "commerce" under Idaho Code § 48-602(2).

23 682. Idaho Code § 48-603 prohibits the following conduct in trade or commerce: engaging
24 in any act or practice which is otherwise misleading, false, or deceptive to the consumer; and
25 engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as
26 provided in section 48-603C.

27 683. In the course of Defendant's business, Defendant willfully failed to disclose and
28 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
6 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
7 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
8 particular standard and quality when they are not; failing to reveal a material fact, the omission of
9 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
10 the consumer; making a representation of fact or statement of fact material to the transaction such
11 that a person reasonably believes the represented or suggested state of affairs to be other than it
12 actually is; and failing to reveal facts that are material to the transaction in light of representations of
13 fact made in a positive manner.

14 684. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 685. Plaintiff and Subclass members reasonably relied upon Defendant's false
20 misrepresentations. They had no way of knowing that Defendant's representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
23 their own.

24 686. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

25 687. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 688. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 689. Defendant knew or should have known that its conduct violated the Idaho CPA.

2 690. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
3 emissions systems manipulation because Defendant:

- 4 a. Possessed exclusive knowledge that it manipulated the emissions system in the
5 Affected Vehicles to turn off or limit effectiveness in normal driving
6 conditions;
7 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
8 c. Made incomplete representations that it manipulated the emissions system in
9 the Affected Vehicles to turn off or limit effectiveness in normal driving
10 conditions, while purposefully withholding material facts from Plaintiff and
11 the Subclass that contradicted these representations.

12 691. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 692. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
20 members.

21 693. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
22 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
23 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
24 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
25 direct and natural consequence of Defendant’s misrepresentations and omissions.

26 694. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
27 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.
28

COUNT II

FRAUDULENT CONCEALMENT
(BASED ON IDAHO LAW)

698. This claim is brought on behalf of the Idaho Subclass against FCA.

700. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

702. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered cars and at a much higher rate than a reasonable consumer would expect in light of Defendant's

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 703. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 704. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 705. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 706. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 707. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 708. Defendant’s false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 709. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant’s actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant’s actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer’s products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 710. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 711. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 712. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 713. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 3 or would not have purchased or leased them at all.

4 714. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 10 vehicles.

11 715. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 12 amount to be proven at trial.

13 716. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 17 future, which amount is to be determined according to proof.

18 **P. Claims Brought on Behalf of the Illinois Subclass**

19 **COUNT I**

20 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND**
 21 **DECEPTIVE BUSINESS PRACTICES ACT**
 22 **(815 ILL. COMP. STAT. 505/1 ET SEQ. AND**
720 ILL. COMP. STAT. 295/1A)

23 717. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

24 718. This claim is brought on behalf of the Illinois Subclass against FCA.

25 719. Defendant is a "person" as that term is defined in 815 Ill. Comp. Stat. 505/1(c).

26 720. Plaintiff and the Subclass members are "consumers" as that term is defined in 815 Ill.
 27 Comp. Stat. 505/1(e).

1 721. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”)
2 prohibits “unfair or deceptive acts or practices, including but not limited to the use or employment of
3 any deception, fraud, false pretense, false promise, misrepresentation or the concealment,
4 suppression, or omission of any material fact, with intent that others rely upon the concealment,
5 suppression, or omission of such material fact ... in the conduct of trade or commerce ... whether
6 any person has in fact been misled, deceived or damaged thereby.” 815 Ill. Comp. Stat. 505/2.

7 722. In the course of Defendant’s business, Defendant willfully failed to disclose and
8 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
9 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
10 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
11 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
12 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
13 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
14 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
15 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
16 particular standard and quality when they are not; failing to reveal a material fact, the omission of
17 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
18 the consumer; making a representation of fact or statement of fact material to the transaction such
19 that a person reasonably believes the represented or suggested state of affairs to be other than it
20 actually is; and failing to reveal facts that are material to the transaction in light of representations of
21 fact made in a positive manner.

22 723. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 724. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 725. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 726. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 727. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 728. Defendant knew or should have known that its conduct violated the Illinois CFA.

10 729. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
11 emissions systems manipulation because Defendant:

- 12 a. Possessed exclusive knowledge that it manipulated the emissions system in the
13 Affected Vehicles to turn off or limit effectiveness in normal driving
14 conditions;
- 15 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 16 c. Made incomplete representations that it manipulated the emissions system in
17 the Affected Vehicles to turn off or limit effectiveness in normal driving
18 conditions, while purposefully withholding material facts from Plaintiff and
19 the Subclass that contradicted these representations.

20 730. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 731. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
28 members.

1 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
2 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
3 properly when driven in normal usage.

4 740. Defendant knew these representations were false when made.

5 741. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
6 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
7 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
8 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions.

10 742. Defendant had a duty to disclose that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
12 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
13 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
14 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
15 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
16 emission vehicles, efficient, and free from defects.

17 743. As alleged in this Complaint, at all relevant times, Defendant has held out the
18 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
19 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
20 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
21 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
22 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
23 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
24 making other disclosures about the emission system deceptive.

25 744. The truth about the defective emissions controls and Defendant's manipulations of
26 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
27 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
28

1 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
2 members.

3 745. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
4 had no way of knowing that Defendant's representations were false and/or misleading. As
5 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
6 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
7 true facts about the Affected Vehicles' emissions.

8 746. Defendant also concealed and suppressed material facts concerning what is evidently
9 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
10 compliance with federal and state clean air laws and emissions regulations that are meant to protect
11 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
12 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
13 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
14 environment. And yet, that is precisely what the Affected Vehicles are doing.

15 747. Defendant's false representations were material to consumers because they concerned
16 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
17 state laws and regulations regarding clean air and emissions, and also because the representations
18 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
19 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
20 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

21 748. Defendant had a duty to disclose the emissions defect, defective design of emissions
22 controls, and violations with respect to the Affected Vehicles because details of the true facts were
23 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
24 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
25 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
26 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
27 references to them as *reduced-emissions diesel cars* and as compliant with all laws in each state,
28 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

1 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
2 respect to compliance with federal and state clean air laws and emissions regulations, and
3 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
4 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because they directly
6 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
7 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
8 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
9 or non-compliance, are material concerns to a consumer, including with respect to the emissions
10 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
11 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
12 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

13 749. Defendant actively concealed and/or suppressed these material facts, in whole or in
14 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
15 vehicles and did not or could not comply with federal and state laws governing clean air and
16 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
17 at the expense of Plaintiff and Subclass members.

18 750. Defendant still has not made full and adequate disclosures, and continues to defraud
19 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
20 of the Affected Vehicles.

21 751. Plaintiff and Subclass members were unaware of the omitted material facts referenced
22 herein, and they would not have acted as they did if they had known of the concealed and/or
23 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
24 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
25 vehicles, or would have taken other affirmative steps in light of the information concealed from
26 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
27 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
28 members.

1 752. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
2 members have sustained damage because they own vehicles that are diminished in value as a result
3 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
4 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
5 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
6 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
7 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
8 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
9 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
10 or would not have purchased or leased them at all.

11 753. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
12 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
13 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
14 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
15 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
16 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
17 vehicles.

18 754. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
19 amount to be proven at trial.

20 755. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
21 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
22 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
23 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
24 future, which amount is to be determined according to proof.

Q. Claims Brought on Behalf of the Kansas Subclass

COUNT I

**VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT
(KAN. STAT. ANN. § 50-623 *ET SEQ.*)**

756. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

757. Plaintiff brings this Count on behalf of the Kansas Subclass against FCA.

645. Defendant is a “supplier” under the Kansas Consumer Protection Act (“Kansas CPA”), Kan. Stat. Ann. § 50-624(l).

750. Kansas Subclass members are “consumers,” within the meaning of Kan. Stat. Ann. § 50-624(b), who purchased or leased one or more Affected Vehicles.

751. The sale of the Affected Vehicles to the Kansas Subclass members was a “consumer transaction” within the meaning of Kan. Stat. Ann. § 50-624(c).

752. The Kansas CPA states “[n]o supplier shall engage in any deceptive act or practice in connection with a consumer transaction,” Kan. Stat. Ann. § 50-626(a), and that deceptive acts or practices include: (1) knowingly making representations or with reason to know that “(A) Property or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have;” and “(D) property or services are of particular standard, quality, grade, style or model, if they are of another which differs materially from the representation;” “(2) the willful use, in any oral or written representation, of exaggeration, falsehood, innuendo or ambiguity as to a material fact;” and “(3) the willful failure to state a material fact, or the willful concealment, suppression, or omission of a material fact.” The Kansas CPA also provides that “[n]o supplier shall engage in any unconscionable act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-627(a).

753. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles

1 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
2 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
3 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
4 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
5 particular standard and quality when they are not; failing to reveal a material fact, the omission of
6 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
7 the consumer; making a representation of fact or statement of fact material to the transaction such
8 that a person reasonably believes the represented or suggested state of affairs to be other than it
9 actually is; and failing to reveal facts that are material to the transaction in light of representations of
10 fact made in a positive manner.

11 758. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
12 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
14 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
15 including NOx, as described above.

16 759. Plaintiff and Subclass members reasonably relied upon Defendant's false
17 misrepresentations. They had no way of knowing that Defendant's representations were false and
18 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
19 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own.

21 760. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

22 761. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
23 reasonable consumers.

24 762. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

26 763. Defendant knew or should have known that its conduct violated the Kansas CPA.

27 764. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

765. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

766. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

767. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

768. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

754. Pursuant to Kan. Stat. Ann. § 50-634, Plaintiff and the Kansas Subclass seek monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$10,000 for Plaintiff and each Kansas Subclass member.

1 775. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 776. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 777. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 778. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 779. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 780. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 781. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

1 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
2 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

3 782. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 783. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 784. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 785. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

786. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

787. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

788. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

R. Claims Brought on Behalf of the Kentucky Subclass

COUNT I

VIOLATIONS OF THE KENTUCKY CONSUMER PROTECTION ACT (KY. REV. STAT. ANN. § 367.110 ET SEQ.)

789. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

790. Plaintiff brings this Count on behalf of the Kentucky Subclass against FCA.

791. Defendant, Plaintiff, and each member of the Kentucky Subclass is a "person" within the meaning of the Ky. Rev. Stat. Ann. § 367.110(1).

792. Defendant engaged in "trade" or "commerce" within the meaning of Ky. Rev. Stat. Ann. § 367.110(2).

793. The Kentucky Consumer Protection Act ("Kentucky CPA") makes unlawful "[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce." Ky. Rev. Stat. Ann. § 367.170(1). In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in deceptive business practices prohibited by the Kentucky CPA.

6 794. In the course of Defendant's business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 795. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 796. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 797. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 798. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 799. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 800. Defendant knew or should have known that its conduct violated the Kentucky CPA.

9 801. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 802. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 803. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 811. Defendant knew these representations were false when made.

2 812. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
3 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
4 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
5 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
6 Affected Vehicles turns off or is limited during normal driving conditions.

7 813. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

14 814. As alleged in this Complaint, at all relevant times, Defendant has held out the
15 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
16 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
17 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
18 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
19 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
20 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
21 making other disclosures about the emission system deceptive.

22 815. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 816. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

4 817. Defendant also concealed and suppressed material facts concerning what is evidently
5 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
6 compliance with federal and state clean air laws and emissions regulations that are meant to protect
7 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
8 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
9 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
10 environment. And yet, that is precisely what the Affected Vehicles are doing.

11 818. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 819. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

1 truth, but the entire truth. These omitted and concealed facts were material because they directly
2 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
3 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
4 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
5 or non-compliance, are material concerns to a consumer, including with respect to the emissions
6 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
7 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
8 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

9 820. Defendant actively concealed and/or suppressed these material facts, in whole or in
10 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
11 vehicles and did not or could not comply with federal and state laws governing clean air and
12 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
13 at the expense of Plaintiff and Subclass members.

14 821. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 822. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 823. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
 2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
 3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
 4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 6 or would not have purchased or leased them at all.

7 824. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 13 vehicles.

14 825. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 15 amount to be proven at trial.

16 826. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 17 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 18 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 19 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 20 future, which amount is to be determined according to proof.

21 **S. Claims Brought on Behalf of the Louisiana Subclass**

22 **COUNT I**

23 **VIOLATION OF THE LOUISIANA UNFAIR TRADE PRACTICES AND**
 24 **CONSUMER PROTECTION LAW**
(LA. STAT. ANN. § 51:1401 ET SEQ.)

25 827. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 26 herein.

27 828. This claim is brought only on behalf of members of the Louisiana Subclass against
 28 FCA.

1 689. Defendant, Plaintiff, and Louisiana Subclass members are “persons” within the
2 meaning of the La. Stat. Ann. § 51:1402(8).

3 836. Plaintiff and Louisiana Subclass members are “consumers” within the meaning of La.
4 Stat. Ann. § 51:1402(1).

5 837. Defendant engaged in “trade” or “commerce” within the meaning of La. Stat. Ann.
6 § 51:1402(9).

7 838. The Louisiana Unfair Trade Practices and Consumer Protection Law (“Louisiana
8 CPL”) makes unlawful “deceptive acts or practices in the conduct of any trade or commerce.” La.
9 Stat. Ann. § 51:1405(A).

10 829. In the course of Defendant’s business, Defendant willfully failed to disclose and
11 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
12 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
13 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
14 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
15 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
16 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
17 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
18 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
19 particular standard and quality when they are not; failing to reveal a material fact, the omission of
20 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
21 the consumer; making a representation of fact or statement of fact material to the transaction such
22 that a person reasonably believes the represented or suggested state of affairs to be other than it
23 actually is; and failing to reveal facts that are material to the transaction in light of representations of
24 fact made in a positive manner.

25 830. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
26 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
27 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
28

controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above.

831. Plaintiff and Subclass members reasonably relied upon Defendant's false misrepresentations. They had no way of knowing that Defendant's representations were false and gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on their own.

832. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

833. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

834. Defendant intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the Subclass.

835. Defendant knew or should have known that its conduct violated the Louisiana CPL.

836. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

837. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on

1 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
2 emission vehicles, efficient, and free from defects.

3 838. As a direct and proximate result of Defendant's violations of the Louisiana CPL,
4 Plaintiff and the Louisiana Subclass have suffered injury in fact and/or actual damage.

5 839. Pursuant to La. Stat. Ann. § 51:1409, Plaintiff and the Louisiana Subclass seek to
6 recover actual damages in an amount to be determined at trial; treble damages for Defendant's
7 knowing violations of the Louisiana CPL; an order enjoining Defendant's unfair, unlawful, and/or
8 deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available
9 under La. Stat. Ann. § 51:1409.

10 **COUNT II**

11 **FRAUDULENT CONCEALMENT**
12 **(BASED ON LOUISIANA LAW)**

13 840. Plaintiff incorporates by reference all preceding allegations as though fully set forth
14 herein.

15 841. This claim is brought on behalf of the Louisiana Subclass against FCA.

16 842. Defendant intentionally concealed that the NOx reduction system in the Affected
17 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
18 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
19 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
20 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
21 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
22 and denied Plaintiff and the other Subclass members information that is highly relevant to their
23 purchasing decision.

24 843. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
25 advertising and other forms of communication, including standard and uniform material provided
26 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
27 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
28 properly when driven in normal usage.

1 844. Defendant knew these representations were false when made.

2 845. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
3 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
4 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
5 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
6 Affected Vehicles turns off or is limited during normal driving conditions.

7 846. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

14 847. As alleged in this Complaint, at all relevant times, Defendant has held out the
15 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
16 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
17 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
18 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
19 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
20 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
21 making other disclosures about the emission system deceptive.

22 848. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 849. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

4 850. Defendant also concealed and suppressed material facts concerning what is evidently
5 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
6 compliance with federal and state clean air laws and emissions regulations that are meant to protect
7 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
8 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
9 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
10 environment. And yet, that is precisely what the Affected Vehicles are doing.

11 851. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 852. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

1 truth, but the entire truth. These omitted and concealed facts were material because they directly
2 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
3 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
4 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
5 or non-compliance, are material concerns to a consumer, including with respect to the emissions
6 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
7 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
8 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

9 853. Defendant actively concealed and/or suppressed these material facts, in whole or in
10 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
11 vehicles and did not or could not comply with federal and state laws governing clean air and
12 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
13 at the expense of Plaintiff and Subclass members.

14 854. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 855. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 856. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
 2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
 3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
 4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 6 or would not have purchased or leased them at all.

7 857. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 13 vehicles.

14 858. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 15 amount to be proven at trial.

16 859. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 17 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 18 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 19 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 20 future, which amount is to be determined according to proof.

21 **T. Claims Brought on Behalf of the Maine Subclass**

22 **COUNT I**

23 **VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT**
 24 **(ME. REV. STAT. ANN. TIT. 5, § 205-A ET SEQ.)**

25 860. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 26 herein.

27 861. This claim is brought on behalf of the Maine Subclass against FCA.

1 868. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
2 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
3 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
4 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions.

6 869. Defendant had a duty to disclose that the NOx reduction system in the Affected
7 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
8 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
9 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
10 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
11 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
12 emission vehicles, efficient, and free from defects.

13 870. As alleged in this Complaint, at all relevant times, Defendant has held out the
14 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
15 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
16 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
17 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
18 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
19 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
20 making other disclosures about the emission system deceptive.

21 871. The truth about the defective emissions controls and Defendant's manipulations of
22 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
23 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
24 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
25 members.

26 872. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
27 had no way of knowing that Defendant's representations were false and/or misleading. As
28 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on

1 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
2 true facts about the Affected Vehicles' emissions.

3 873. Defendant also concealed and suppressed material facts concerning what is evidently
4 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
5 compliance with federal and state clean air laws and emissions regulations that are meant to protect
6 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
7 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
8 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
9 environment. And yet, that is precisely what the Affected Vehicles are doing.

10 874. Defendant's false representations were material to consumers because they concerned
11 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
12 state laws and regulations regarding clean air and emissions, and also because the representations
13 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
14 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
15 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

16 875. Defendant had a duty to disclose the emissions defect, defective design of emissions
17 controls, and violations with respect to the Affected Vehicles because details of the true facts were
18 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
19 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
20 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
21 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
22 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
23 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
24 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
25 respect to compliance with federal and state clean air laws and emissions regulations, and
26 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
27 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
28 truth, but the entire truth. These omitted and concealed facts were material because they directly

1 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
2 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
3 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
4 or non-compliance, are material concerns to a consumer, including with respect to the emissions
5 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
6 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
7 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

8 876. Defendant actively concealed and/or suppressed these material facts, in whole or in
9 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
10 vehicles and did not or could not comply with federal and state laws governing clean air and
11 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
12 at the expense of Plaintiff and Subclass members.

13 877. Defendant still has not made full and adequate disclosures, and continues to defraud
14 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
15 of the Affected Vehicles.

16 878. Plaintiff and Subclass members were unaware of the omitted material facts referenced
17 herein, and they would not have acted as they did if they had known of the concealed and/or
18 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
19 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
20 vehicles, or would have taken other affirmative steps in light of the information concealed from
21 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
22 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
23 members.

24 879. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
25 members have sustained damage because they own vehicles that are diminished in value as a result
26 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
27 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
28 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered

1 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
2 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
3 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
4 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
5 or would not have purchased or leased them at all.

6 880. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
7 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
8 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
9 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
10 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
11 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
12 vehicles.

13 881. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
14 amount to be proven at trial.

15 882. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
16 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
17 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
18 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
19 future, which amount is to be determined according to proof.

20 **U. Claims Brought on Behalf of the Maryland Subclass**

21 **COUNT I**

22 **VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**
23 **(MD. CODE ANN., COM. LAW § 13-101 ET SEQ.)**

24 883. Plaintiff incorporates by reference all preceding allegations as though fully set forth
25 herein.

26 884. This claim is brought only on behalf of members of the Maryland Subclass against
27 FCA.
28

1 885. Defendant, Plaintiff, and the Maryland Subclass members are “persons” within the
2 meaning of Md. Code Ann., Com. Law § 13-101(h).

3 886. The Maryland Consumer Protection Act (“Maryland CPA”) provides that a person
4 may not engage in any unfair or deceptive trade practice in the sale of any consumer good. Md.
5 Code Ann., Com. Law Code § 13-303. In the course of Defendant’s business, Defendant willfully
6 failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles
7 turns off or is limited during normal driving conditions, that the emissions controls were defective,
8 that the vehicles have a “defeat device,” and that the Affected Vehicles emitted unlawfully high
9 levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair
10 and deceptive trade practices. Defendant’s acts and practices offend public policy; were immoral,
11 unethical, oppressive, or unscrupulous; caused substantial injury to consumers; had the capacity,
12 tendency or effect of deceiving or misleading consumers; failed to state a material fact that deceives
13 or tends to deceive; and constitute deception, fraud, false pretense, false premise, misrepresentation,
14 or knowing concealment, suppression, or omission of any material fact with the intent that a
15 consumer rely on the same in connection therewith.

16 887. In the course of Defendant’s business, Defendant willfully failed to disclose and
17 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
18 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
19 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
20 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
21 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
22 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
23 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
24 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
25 particular standard and quality when they are not; failing to reveal a material fact, the omission of
26 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
27 the consumer; making a representation of fact or statement of fact material to the transaction such
28 that a person reasonably believes the represented or suggested state of affairs to be other than it

1 actually is; and failing to reveal facts that are material to the transaction in light of representations of
2 fact made in a positive manner.

3 888. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
4 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
6 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
7 including NOx, as described above.

8 889. Plaintiff and Subclass members reasonably relied upon Defendant's false
9 misrepresentations. They had no way of knowing that Defendant's representations were false and
10 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
11 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
12 their own.

13 890. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

14 891. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
15 reasonable consumers.

16 892. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

18 893. Defendant knew or should have known that its conduct violated the Maryland CPA.

19 894. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
20 emissions systems manipulation because Defendant:

- 21 a. Possessed exclusive knowledge that it manipulated the emissions system in the
22 Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions;
- 24 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 25 c. Made incomplete representations that it manipulated the emissions system in
26 the Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions, while purposefully withholding material facts from Plaintiff and
28 the Subclass that contradicted these representations.

1 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
2 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
3 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
4 and denied Plaintiff and the other Subclass members information that is highly relevant to their
5 purchasing decision.

6 903. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
7 advertising and other forms of communication, including standard and uniform material provided
8 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
9 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
10 properly when driven in normal usage.

11 904. Defendant knew these representations were false when made.

12 905. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
13 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
14 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
15 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions.

17 906. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 907. As alleged in this Complaint, at all relevant times, Defendant has held out the
25 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
26 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
27 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
28 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a

1 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
2 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
3 making other disclosures about the emission system deceptive.

4 908. The truth about the defective emissions controls and Defendant’s manipulations of
5 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
6 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
7 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
8 members.

9 909. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
10 had no way of knowing that Defendant’s representations were false and/or misleading. As
11 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
12 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
13 true facts about the Affected Vehicles’ emissions.

14 910. Defendant also concealed and suppressed material facts concerning what is evidently
15 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
16 compliance with federal and state clean air laws and emissions regulations that are meant to protect
17 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
18 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
19 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
20 environment. And yet, that is precisely what the Affected Vehicles are doing.

21 911. Defendant’s false representations were material to consumers because they concerned
22 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
23 state laws and regulations regarding clean air and emissions, and also because the representations
24 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
25 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
26 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

27 912. Defendant had a duty to disclose the emissions defect, defective design of emissions
28 controls, and violations with respect to the Affected Vehicles because details of the true facts were

1 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
2 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
3 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
4 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
5 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
6 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
7 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
8 respect to compliance with federal and state clean air laws and emissions regulations, and
9 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
10 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
11 truth, but the entire truth. These omitted and concealed facts were material because they directly
12 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
13 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
14 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
15 or non-compliance, are material concerns to a consumer, including with respect to the emissions
16 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
17 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
18 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

19 913. Defendant actively concealed and/or suppressed these material facts, in whole or in
20 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
21 vehicles and did not or could not comply with federal and state laws governing clean air and
22 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
23 at the expense of Plaintiff and Subclass members.

24 914. Defendant still has not made full and adequate disclosures, and continues to defraud
25 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
26 of the Affected Vehicles.

27 915. Plaintiff and Subclass members were unaware of the omitted material facts referenced
28 herein, and they would not have acted as they did if they had known of the concealed and/or

1 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
2 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
3 vehicles, or would have taken other affirmative steps in light of the information concealed from
4 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
5 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
6 members.

7 916. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
8 members have sustained damage because they own vehicles that are diminished in value as a result
9 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
10 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
11 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
12 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
13 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
14 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
15 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
16 or would not have purchased or leased them at all.

17 917. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
18 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
19 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
20 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
21 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
22 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
23 vehicles.

24 918. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
25 amount to be proven at trial.

26 919. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
27 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
28 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct

warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

V. Claims Brought on Behalf of the Massachusetts Subclass

COUNT I

**VIOLATIONS OF THE MASSACHUSETTS CONSUMER
PROTECTION ACT
(MASS. GEN. LAWS CH. 93A)**

920. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

921. This claim is brought on behalf of the Massachusetts Subclass against FCA.

922. Plaintiff intends to assert a claim under the Massachusetts Consumer Protection Act (“MCPA”), which makes it unlawful to engage in any “[u]nfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce.” Mass. Gen. Laws ch. 93A, § 2(1). Plaintiff will make a demand in satisfaction of Mass. Gen. Laws ch. 93A, § 9(3), and may amend this Complaint to assert claims under the MCPA once the required 30 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the MCPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON MASSACHUSETTS LAW)**

923. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

924. This claim is brought on behalf of the Massachusetts Subclass against FCA.

925. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 926. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 927. Defendant knew these representations were false when made.

9 928. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 929. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 930. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 931. The truth about the defective emissions controls and Defendant's manipulations of
2 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 932. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
7 had no way of knowing that Defendant's representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles' emissions.

11 933. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 934. Defendant's false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 935. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 936. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 937. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 938. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 939. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 940. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 941. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 942. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

W. Claims Brought on Behalf of the Michigan Subclass

COUNT I

**VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT
(MICH. COMP. LAWS § 445.903 *ET SEQ.*)**

943. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

944. This claim is brought on behalf of the Michigan Subclass against FCA.

945. Plaintiff and the Michigan Subclass members were “person[s]” within the meaning of the Mich. Comp. Laws § 445.902(1)(d).

946. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce,” including: “(c) Representing that goods or services have ... characteristics ... that they do not have;” “(e) Representing that goods or services are of a particular standard ... if they are of another;” “(i) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;” “(s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;” “(bb) Making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;” and “(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.” Mich. Comp. Laws § 445.903(1).

947. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of

1 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
2 the consumer; making a representation of fact or statement of fact material to the transaction such
3 that a person reasonably believes the represented or suggested state of affairs to be other than it
4 actually is; and failing to reveal facts that are material to the transaction in light of representations of
5 fact made in a positive manner.

6 948. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
7 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
9 controls were defective, and that the Affected Vehicles emitted unexpectedly high levels of
10 pollutants, including NOx, as described above.

11 949. Plaintiff and Subclass members reasonably relied upon Defendant's false
12 misrepresentations. They had no way of knowing that Defendant's representations were false and
13 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
14 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
15 their own.

16 950. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

17 951. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
18 reasonable consumers.

19 952. Defendant intentionally and knowingly misrepresented material facts regarding the
20 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

21 953. Defendant knew or should have known that its conduct violated the Michigan CPA.

22 954. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
23 emissions systems manipulation because Defendant:

- 24 a. Possessed exclusive knowledge that it manipulated the emissions system in the
25 Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions;
- 27 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

1 c. Made incomplete representations that it manipulated the emissions system in
2 the Affected Vehicles to turn off or limit effectiveness in normal driving
3 conditions, while purposefully withholding material facts from Plaintiff and
4 the Subclass that contradicted these representations.

5 955. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, and had emissions that far exceeded those expected by a reasonable consumer.

9 956. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
10 members.

11 957. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
12 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
13 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
14 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
15 direct and natural consequence of Defendant’s misrepresentations and omissions.

16 958. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
17 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

18 959. Plaintiff seeks monetary relief measured as the greater of (a) actual damages in an
19 amount to be determined at trial and (b) statutory damages in the amount of \$250 for Plaintiff and
20 each Michigan Subclass member; reasonable attorneys’ fees; and any other just and proper relief
21 available under Mich. Comp. Laws § 445.911. Plaintiff also seeks punitive damages against
22 Defendant because it carried out despicable conduct with willful and conscious disregard of the
23 rights of others. Defendant’s unlawful conduct constitutes malice, oppression, and fraud warranting
24 punitive damages.

25 **COUNT II**

26 **FRAUDULENT CONCEALMENT**
27 **(BASED ON MICHIGAN LAW)**

28 960. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1 961. This claim is brought on behalf of the Michigan Subclass against FCA.

2 962. Defendant intentionally concealed that the NOx reduction system in the Affected
3 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
4 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
5 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
6 advertising campaign, and emitted unlawfully high levels of pollutants such as NOx, or Defendant
7 acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members
8 information that is highly relevant to their purchasing decision.

9 963. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
10 advertising and other forms of communication, including standard and uniform material provided
11 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
12 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
13 properly when driven in normal usage.

14 964. Defendant knew these representations were false when made.

15 965. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
16 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
17 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
18 advertising campaign, and were unreliable because the NOx reduction system in the Affected
19 Vehicles turns off or is limited during normal driving conditions.

20 966. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, and had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 967. As alleged in this Complaint, at all relevant times, Defendant has held out the
28 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain

1 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
2 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
3 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
4 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, and
5 emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions
6 requirements, making other disclosures about the emission system deceptive.

7 968. The truth about the defective emissions controls and Defendant’s manipulations of
8 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
9 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
10 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
11 members.

12 969. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
13 had no way of knowing that Defendant’s representations were false and/or misleading. As
14 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
15 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
16 true facts about the Affected Vehicles’ emissions.

17 970. Defendant also concealed and suppressed material facts concerning what is evidently
18 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
19 compliance with federal and state clean air laws and emissions regulations that are meant to protect
20 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
21 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
22 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
23 environment. And yet, that is precisely what the Affected Vehicles are doing.

24 971. Defendant’s false representations were material to consumers because they concerned
25 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
26 state laws and regulations regarding clean air and emissions, and also because the representations
27 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
28

1 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
2 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

3 972. Defendant had a duty to disclose the emissions defect, defective design of emissions
4 controls, and violations with respect to the Affected Vehicles because details of the true facts were
5 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
6 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
7 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
8 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
9 references to them as *reduced-emissions* diesel cars and as compliant with all laws in each state,
10 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
11 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
12 respect to compliance with federal and state clean air laws and emissions regulations, and
13 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
14 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
15 truth, but the entire truth. These omitted and concealed facts were material because they directly
16 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
17 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
18 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
19 or non-compliance, are material concerns to a consumer, including with respect to the emissions
20 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
21 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
22 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

23 973. Defendant actively concealed and/or suppressed these material facts, in whole or in
24 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
25 vehicles and did not or could not comply with federal and state laws governing clean air and
26 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
27 at the expense of Plaintiff and Subclass members.

1 974. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 975. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 976. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth,
19 Plaintiff and Subclass members who purchased or leased new or certified pre-owned vehicles would
20 have paid less for their vehicles or would not have purchased or leased them at all.

21 977. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
22 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles,
23 and the unlawfully high emissions of the Affected Vehicles, all of which has greatly tarnished
24 Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made
25 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what
26 otherwise would have been fair market value for the vehicles.

27 978. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
28 amount to be proven at trial.

979. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

X. Claims Brought on Behalf of the Minnesota Subclass

COUNT I

**VIOLATION OF THE MINNESOTA PREVENTION OF CONSUMER FRAUD ACT
(MINN. STAT. § 325F.68 ET SEQ.)**

980. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

981. This claim is brought on behalf of the Minnesota Subclass against FCA.

982. The Affected Vehicles constitute "merchandise" within the meaning of Minn. Stat. § 325F.68(2).

983. The Minnesota Prevention of Consumer Fraud Act ("Minnesota CFA") prohibits "[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby." Minn. Stat. § 325F.69(1). The Minnesota CFA also prohibits the dissemination, directly or indirectly, of an advertisement "of any sort regarding merchandise," where that advertisement contains "any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading." Minn. Stat. § 325F.67. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant used or employed a fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon

1 in connection with the sale of any merchandise, whether or not any person has in fact been misled,
2 deceived, or damaged thereby and disseminated advertisements containing material assertions,
3 representations, or statements of fact which were untrue, deceptive, or misleading, all in violation of
4 the Minnesota CFA.

5 984. In the course of Defendant's business, Defendant willfully failed to disclose and
6 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
7 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
8 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
9 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
10 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
11 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
12 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
13 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
14 particular standard and quality when they are not; failing to reveal a material fact, the omission of
15 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
16 the consumer; making a representation of fact or statement of fact material to the transaction such
17 that a person reasonably believes the represented or suggested state of affairs to be other than it
18 actually is; and failing to reveal facts that are material to the transaction in light of representations of
19 fact made in a positive manner.

20 985. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
21 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
22 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
23 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
24 including NOx, as described above.

25 986. Plaintiff and Subclass members reasonably relied upon Defendant's false
26 misrepresentations. They had no way of knowing that Defendant's representations were false and
27 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
28

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 987. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 988. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 989. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 990. Defendant knew or should have known that its conduct violated the Minnesota CFA.

9 991. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 992. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 993. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.
28

1 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
2 properly when driven in normal usage.

3 1002. Defendant knew these representations were false when made.

4 1003. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
5 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
6 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
7 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
8 Affected Vehicles turns off or is limited during normal driving conditions.

9 1004. Defendant had a duty to disclose that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
11 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
12 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
13 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
14 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
15 emission vehicles, efficient, and free from defects.

16 1005. As alleged in this Complaint, at all relevant times, Defendant has held out the
17 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
18 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
19 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
20 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
21 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
22 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
23 making other disclosures about the emission system deceptive.

24 1006. The truth about the defective emissions controls and Defendant's manipulations of
25 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
26 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
27 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
28 members.

1 1007. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
2 had no way of knowing that Defendant's representations were false and/or misleading. As
3 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
4 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
5 true facts about the Affected Vehicles' emissions.

6 1008. Defendant also concealed and suppressed material facts concerning what is evidently
7 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
8 compliance with federal and state clean air laws and emissions regulations that are meant to protect
9 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
10 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
11 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
12 environment. And yet, that is precisely what the Affected Vehicles are doing.

13 1009. Defendant's false representations were material to consumers because they concerned
14 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
15 state laws and regulations regarding clean air and emissions, and also because the representations
16 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
17 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
18 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

19 1010. Defendant had a duty to disclose the emissions defect, defective design of emissions
20 controls, and violations with respect to the Affected Vehicles because details of the true facts were
21 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
22 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
23 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
24 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
25 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
26 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
27 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
28 respect to compliance with federal and state clean air laws and emissions regulations, and

1 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
2 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
3 truth, but the entire truth. These omitted and concealed facts were material because they directly
4 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
5 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
6 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
7 or non-compliance, are material concerns to a consumer, including with respect to the emissions
8 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
9 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
10 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

11 1011. Defendant actively concealed and/or suppressed these material facts, in whole or in
12 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
13 vehicles and did not or could not comply with federal and state laws governing clean air and
14 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
15 at the expense of Plaintiff and Subclass members.

16 1012. Defendant still has not made full and adequate disclosures, and continues to defraud
17 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
18 of the Affected Vehicles.

19 1013. Plaintiff and Subclass members were unaware of the omitted material facts referenced
20 herein, and they would not have acted as they did if they had known of the concealed and/or
21 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
22 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
23 vehicles, or would have taken other affirmative steps in light of the information concealed from
24 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
25 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
26 members.

27 1014. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
28 members have sustained damage because they own vehicles that are diminished in value as a result

of Defendant's concealment of the true quality and quantity of those vehicles' emissions and Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or leased them at all.

1015. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1016. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1017. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Y. Claims Brought on Behalf of the Missouri Subclass

COUNT I

VIOLATIONS OF THE MISSOURI MERCHANDISING PRACTICES ACT (MO. REV. STAT. § 407.010 ET SEQ.)

1018. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1019. Plaintiff brings this Count on behalf of the Missouri Subclass against FCA.

1 1020. Defendant, Plaintiff, and the Missouri Subclass members are “persons” within the
2 meaning of Mo. Rev. Stat. § 407.010(5).

3 1021. Defendant engaged in “trade” or “commerce” in the State of Missouri within the
4 meaning of Mo. Rev. Stat. § 407.010(7).

5 1022. The Missouri Merchandising Practices Act (“Missouri MPA”) makes unlawful the
6 “act, use or employment by any person of any deception, fraud, false pretense, misrepresentation,
7 unfair practice, or the concealment, suppression, or omission of any material fact in connection with
8 the sale or advertisement of any merchandise.” Mo. Rev. Stat. § 407.020. In the course of
9 Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx
10 reduction system in the Affected Vehicles turns off or is limited during normal driving conditions,
11 that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the
12 Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of
13 Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of
14 pollutants, including NOx, as described above. Accordingly, Defendant used or employed
15 deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment,
16 suppression, or omission of any material fact in connection with the sale or advertisement of any
17 merchandise in trade or commerce, in violation of the Missouri MPA. Defendant’s conduct offends
18 public policy; is unethical, oppressive, or unscrupulous; and presents a risk of, or causes, substantial
19 injury to consumers.

20 1023. In the course of Defendant’s business, Defendant willfully failed to disclose and
21 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
22 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
23 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
24 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
25 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
26 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
27 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
28 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a

1 particular standard and quality when they are not; failing to reveal a material fact, the omission of
2 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
3 the consumer; making a representation of fact or statement of fact material to the transaction such
4 that a person reasonably believes the represented or suggested state of affairs to be other than it
5 actually is; and failing to reveal facts that are material to the transaction in light of representations of
6 fact made in a positive manner.

7 1024. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
8 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
10 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
11 including NOx, as described above.

12 1025. Plaintiff and Subclass members reasonably relied upon Defendant's false
13 misrepresentations. They had no way of knowing that Defendant's representations were false and
14 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
15 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
16 their own.

17 1026. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

18 1027. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
19 reasonable consumers.

20 1028. Defendant intentionally and knowingly misrepresented material facts regarding the
21 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

22 1029. Defendant knew or should have known that its conduct violated the Missouri MPA.

23 1030. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
24 emissions systems manipulation because Defendant:

- 25 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 26 Affected Vehicles to turn off or limit effectiveness in normal driving
- 27 conditions;
- 28 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or

- 1 c. Made incomplete representations that it manipulated the emissions system in
2 the Affected Vehicles to turn off or limit effectiveness in normal driving
3 conditions, while purposefully withholding material facts from Plaintiff and
4 the Subclass that contradicted these representations.

5 1031. Defendant had a duty to disclose that the NOx reduction system in the Affected
6 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
7 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
8 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
9 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
10 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
11 emission vehicles, efficient, and free from defects.

12 1032. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
13 members.

14 1033. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
15 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
16 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
17 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
18 direct and natural consequence of Defendant’s misrepresentations and omissions.

19 1034. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
20 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

21 1035. Defendant is liable to Plaintiff and the Missouri Subclass for damages in amounts to
22 be proven at trial, including attorneys’ fees, costs, and punitive damages, and any other just and
23 proper relief under Mo. Rev. Stat. § 407.025.

24 **COUNT II**

25 **FRAUDULENT CONCEALMENT**
26 **(BASED ON MISSOURI LAW)**

27 1036. Plaintiff incorporates by reference all preceding allegations as though fully set forth
28 herein.

1 1037. This claim is brought on behalf of the Missouri Subclass against FCA.

2 1038. Defendant intentionally concealed that the NOx reduction system in the Affected
3 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
4 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
5 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
6 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
7 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
8 and denied Plaintiff and the other Subclass members information that is highly relevant to their
9 purchasing decision.

10 1039. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
11 advertising and other forms of communication, including standard and uniform material provided
12 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
13 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
14 properly when driven in normal usage.

15 1040. Defendant knew these representations were false when made.

16 1041. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
17 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
18 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
19 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
20 Affected Vehicles turns off or is limited during normal driving conditions.

21 1042. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 1043. As alleged in this Complaint, at all relevant times, Defendant has held out the
2 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
3 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
4 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
5 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
6 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
7 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
8 making other disclosures about the emission system deceptive.

9 1044. The truth about the defective emissions controls and Defendant’s manipulations of
10 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
11 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
12 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
13 members.

14 1045. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
15 had no way of knowing that Defendant’s representations were false and/or misleading. As
16 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
17 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
18 true facts about the Affected Vehicles’ emissions.

19 1046. Defendant also concealed and suppressed material facts concerning what is evidently
20 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
21 compliance with federal and state clean air laws and emissions regulations that are meant to protect
22 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
23 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
24 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
25 environment. And yet, that is precisely what the Affected Vehicles are doing.

26 1047. Defendant’s false representations were material to consumers because they concerned
27 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
28 state laws and regulations regarding clean air and emissions, and also because the representations

1 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
2 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
3 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

4 1048. Defendant had a duty to disclose the emissions defect, defective design of emissions
5 controls, and violations with respect to the Affected Vehicles because details of the true facts were
6 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
7 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
8 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
9 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
10 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
11 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
12 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
13 respect to compliance with federal and state clean air laws and emissions regulations, and
14 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
15 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
16 truth, but the entire truth. These omitted and concealed facts were material because they directly
17 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
18 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
19 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
20 or non-compliance, are material concerns to a consumer, including with respect to the emissions
21 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
22 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
23 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

24 1049. Defendant actively concealed and/or suppressed these material facts, in whole or in
25 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
26 vehicles and did not or could not comply with federal and state laws governing clean air and
27 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
28 at the expense of Plaintiff and Subclass members.

1 1050. Defendant still has not made full and adequate disclosures, and continues to defraud
2 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
3 of the Affected Vehicles.

4 1051. Plaintiff and Subclass members were unaware of the omitted material facts referenced
5 herein, and they would not have acted as they did if they had known of the concealed and/or
6 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
7 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
8 vehicles, or would have taken other affirmative steps in light of the information concealed from
9 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
10 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
11 members.

12 1052. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
13 members have sustained damage because they own vehicles that are diminished in value as a result
14 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
15 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
16 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
17 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
18 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
19 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
20 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
21 or would not have purchased or leased them at all.

22 1053. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
23 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
24 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
25 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
26 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
27 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
28 vehicles.

1 1054. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
2 amount to be proven at trial.

3 1055. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
5 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
6 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
7 future, which amount is to be determined according to proof.

8 **Z. Claims Brought on Behalf of the Montana Subclass**

9 **COUNT I**

10 **VIOLATION OF MONTANA UNFAIR TRADE PRACTICES AND CONSUMER**
11 **PROTECTION ACT OF 1973**
(MONT. CODE ANN. § 30-14-101 ET SEQ.)

12 1056. Plaintiff incorporates by reference all preceding allegations as though fully set forth
13 herein.

14 1057. This claim is brought only on behalf of the Montana Subclass against FCA.

15 1058. Defendant, Plaintiff, and the Montana Subclass members are "persons" within the
16 meaning of Mont. Code Ann. § 30-14-102(6).

17 1059. Montana Subclass members are "consumer[s]" under Mont. Code Ann. § 30-14-
18 102(1).

19 1060. The sale or lease of the Affected Vehicles to Montana Subclass members occurred
20 within "trade and commerce" within the meaning of Mont. Code Ann. § 30-14-102(8), and
21 Defendant committed deceptive and unfair acts in the conduct of "trade and commerce" as defined in
22 that statutory section.

23 1061. The Montana Unfair Trade Practices and Consumer Protection Act ("Montana CPA")
24 makes unlawful any "unfair methods of competition and unfair or deceptive acts or practices in the
25 conduct of any trade or commerce." Mont. Code Ann. § 30-14-103. In the course of Defendant's
26 business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system
27 in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected
28 Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit

1 far more pollution than a reasonable consumer would expect in light of Defendant's advertising
2 campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including
3 NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition and
4 unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of the
5 Montana CPA.

6 1062. In the course of Defendant's business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1063. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1064. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1065. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1066. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1067. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1068. Defendant knew or should have known that its conduct violated the Montana CPA.

9 1069. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1070. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1071. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1072. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

1073. Defendant's violations present a continuing risk to Plaintiff as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

1074. Because Defendant's unlawful methods, acts, and practices have caused Plaintiff and Montana Subclass members to suffer an ascertainable loss of money and property, Plaintiff and the Subclass seek from Defendant actual damages or \$500, whichever is greater, discretionary treble damages, reasonable attorneys' fees, and any other relief the Court considers necessary or proper, under Mont. Code Ann. § 30-14-133.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON MONTANA LAW)

1075. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1076. This claim is brought on behalf of the Montana Subclass against FCA.

1077. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1078. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided

1 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
2 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
3 properly when driven in normal usage.

4 1079. Defendant knew these representations were false when made.

5 1080. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
6 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
7 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
8 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
9 Affected Vehicles turns off or is limited during normal driving conditions.

10 1081. Defendant had a duty to disclose that the NOx reduction system in the Affected
11 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
12 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
13 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
14 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
15 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
16 emission vehicles, efficient, and free from defects.

17 1082. As alleged in this Complaint, at all relevant times, Defendant has held out the
18 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
19 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
20 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
21 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
22 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
23 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
24 making other disclosures about the emission system deceptive.

25 1083. The truth about the defective emissions controls and Defendant's manipulations of
26 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
27 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
28

1 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
2 members.

3 1084. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
4 had no way of knowing that Defendant's representations were false and/or misleading. As
5 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
6 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
7 true facts about the Affected Vehicles' emissions.

8 1085. Defendant also concealed and suppressed material facts concerning what is evidently
9 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
10 compliance with federal and state clean air laws and emissions regulations that are meant to protect
11 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
12 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
13 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
14 environment. And yet, that is precisely what the Affected Vehicles are doing.

15 1086. Defendant's false representations were material to consumers because they concerned
16 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
17 state laws and regulations regarding clean air and emissions, and also because the representations
18 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
19 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
20 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

21 1087. Defendant had a duty to disclose the emissions defect, defective design of emissions
22 controls, and violations with respect to the Affected Vehicles because details of the true facts were
23 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
24 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
25 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
26 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
27 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
28 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set

1 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
2 respect to compliance with federal and state clean air laws and emissions regulations, and
3 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
4 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
5 truth, but the entire truth. These omitted and concealed facts were material because they directly
6 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
7 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
8 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
9 or non-compliance, are material concerns to a consumer, including with respect to the emissions
10 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
11 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
12 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

13 1088. Defendant actively concealed and/or suppressed these material facts, in whole or in
14 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
15 vehicles and did not or could not comply with federal and state laws governing clean air and
16 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
17 at the expense of Plaintiff and Subclass members.

18 1089. Defendant still has not made full and adequate disclosures, and continues to defraud
19 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
20 of the Affected Vehicles.

21 1090. Plaintiff and Subclass members were unaware of the omitted material facts referenced
22 herein, and they would not have acted as they did if they had known of the concealed and/or
23 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
24 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
25 vehicles, or would have taken other affirmative steps in light of the information concealed from
26 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
27 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
28 members.

1 1091. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
2 members have sustained damage because they own vehicles that are diminished in value as a result
3 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
4 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
5 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
6 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
7 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
8 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
9 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
10 or would not have purchased or leased them at all.

11 1092. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
12 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
13 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
14 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
15 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
16 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
17 vehicles.

18 1093. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
19 amount to be proven at trial.

20 1094. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
21 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
22 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
23 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
24 future, which amount is to be determined according to proof.

AA. Claims Brought on Behalf of the Nebraska Subclass

COUNT I

**VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT
(NEB. REV. STAT. § 59-1601 *ET SEQ.*)**

1095. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1096. This claim is brought on behalf of the Nebraska Subclass against FCA.

1097. Defendant, Plaintiff and Nebraska Subclass members are “person[s]” under the Nebraska Consumer Protection Act (“Nebraska CPA”), Neb. Rev. Stat. § 59-1601(1).

1098. Defendant’s actions as set forth herein occurred in the conduct of trade or commerce as defined under Neb. Rev. Stat. § 59-1601(2).

1099. The Nebraska CPA prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Neb. Rev. Stat. § 59-1602. Defendant’s conduct as set forth herein constitutes unfair or deceptive acts or practices.

1100. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it

1 actually is; and failing to reveal facts that are material to the transaction in light of representations of
2 fact made in a positive manner.

3 1101. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
4 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
5 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
6 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
7 including NOx, as described above.

8 1102. Plaintiff and Subclass members reasonably relied upon Defendant's false
9 misrepresentations. They had no way of knowing that Defendant's representations were false and
10 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
11 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
12 their own.

13 1103. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

14 1104. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
15 reasonable consumers.

16 1105. Defendant intentionally and knowingly misrepresented material facts regarding the
17 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

18 1106. Defendant knew or should have known that its conduct violated the Nebraska CPA.

19 1107. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
20 emissions systems manipulation because Defendant:

- 21 a. Possessed exclusive knowledge that it manipulated the emissions system in the
22 Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions;
- 24 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 25 c. Made incomplete representations that it manipulated the emissions system in
26 the Affected Vehicles to turn off or limit effectiveness in normal driving
27 conditions, while purposefully withholding material facts from Plaintiff and
28 the Subclass that contradicted these representations.

1108. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1109. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1110. Because Defendant’s conduct caused injury to Nebraska Subclass members’ property through violations of the Nebraska CPA, Plaintiff and the Nebraska Subclass seek recovery of actual damages, as well as enhanced damages up to \$1,000, an order enjoining Defendant’s unfair or deceptive acts and practices, court costs, reasonable attorneys’ fees, and any other just and proper relief available under Neb. Rev. Stat. § 59-1609.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON NEBRASKA LAW)

1111. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1112. Plaintiff brings this Count on behalf of the Nebraska Subclass against FCA.

1113. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1 1114. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1115. Defendant knew these representations were false when made.

7 1116. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1117. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1118. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1119. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1120. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1121. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1122. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1123. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1124. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1125. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1126. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1127. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1128. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1129. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1130. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

BB. Claims Brought on Behalf of the Nevada Subclass

COUNT I

**VIOLATIONS OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT
(NEV. REV. STAT. § 598.0903 *ET SEQ.*)**

1131. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1132. Plaintiff brings this Count on behalf of the Nevada Subclass against FCA.

1133. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”), Nev. Rev. Stat. § 598.0903 *et seq.*, prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a person engages in a “deceptive trade practice” if, in the course of business or occupation, the person:

“5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith”; “7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model”; “9. Advertises goods or services with intent not to sell or lease them as advertised”; or “15. Knowingly makes any other false representation in a transaction.”

Accordingly, Defendant has violated the Nevada DTPA by knowingly representing that the Affected Vehicles have uses and benefits which they do not have; representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not; advertising Affected Vehicles with the intent not to sell or lease them as advertised; representing that the subject of a transaction involving Affected Vehicles has been supplied in accordance with a previous representation when it has not; and knowingly making other false representations in a transaction.

1134. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,

1 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
2 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
3 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
4 particular standard and quality when they are not; failing to reveal a material fact, the omission of
5 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
6 the consumer; making a representation of fact or statement of fact material to the transaction such
7 that a person reasonably believes the represented or suggested state of affairs to be other than it
8 actually is; and failing to reveal facts that are material to the transaction in light of representations of
9 fact made in a positive manner.

10 1135. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
11 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
12 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
13 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
14 including NOx, as described above.

15 1136. Plaintiff and Subclass members reasonably relied upon Defendant's false
16 misrepresentations. They had no way of knowing that Defendant's representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
19 their own.

20 1137. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

21 1138. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
22 reasonable consumers.

23 1139. Defendant intentionally and knowingly misrepresented material facts regarding the
24 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

25 1140. Defendant knew or should have known that its conduct violated the Nevada DTPA.

26 1141. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
27 emissions systems manipulation because Defendant:
28

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1142. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1143. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1144. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

1145. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1146. Accordingly, Plaintiff and the Nevada Subclass seek their actual damages, punitive damages, court costs, attorney’s fees, and all other appropriate and available remedies under the Nevada DTPA. Nev. Rev. Stat. § 41.600.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON NEVADA LAW)**

1147. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1148. This claim is brought on behalf of the Nevada Subclass against FCA.

1149. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1150. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1151. Defendant knew these representations were false when made.

1152. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1153. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1154. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1155. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1156. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1157. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1158. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1159. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1160. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1161. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1162. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1163. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1164. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 5 vehicles.

6 1165. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 7 amount to be proven at trial.

8 1166. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 12 future, which amount is to be determined according to proof.

13 **CC. Claims Brought on Behalf of the New Hampshire Subclass under New Hampshire Law**

14 **COUNT I**

15 **VIOLATION OF N.H. CONSUMER PROTECTION ACT**
 16 **(N.H. REV. STAT. § 358-A:1 ET SEQ.)**

17 1167. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 18 herein.

19 1168. Plaintiff brings this claim on behalf of the New Hampshire Subclass against FCA.

20 1169. Plaintiff, New Hampshire Subclass members, and Defendant are "persons" under the
 21 New Hampshire Consumer Protection Act ("New Hampshire CPA"), N.H. Rev. Stat. § 358-A:1.

22 1170. Defendant's actions as set forth herein occurred in the conduct of trade or commerce
 23 as defined under N.H. Rev. Stat. § 358-A:1.

24 1171. The New Hampshire CPA prohibits a person, in the conduct of any trade or
 25 commerce, from using "any unfair or deceptive act or practice," including "but ... not limited to, the
 26 following: ... (V) Representing that goods or services have ... characteristics, ... uses, benefits, or
 27 quantities that they do not have;" "(VII) Representing that goods or services are of a particular
 28

1 standard, quality, or grade, ... if they are of another;" and "(IX) Advertising goods or services with
2 intent not to sell them as advertised." N.H. Rev. Stat. § 358-A:2.

3 1172. In the course of Defendant's business, Defendant willfully failed to disclose and
4 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
5 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
6 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
7 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
8 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
9 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
10 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
11 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
12 particular standard and quality when they are not; failing to reveal a material fact, the omission of
13 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
14 the consumer; making a representation of fact or statement of fact material to the transaction such
15 that a person reasonably believes the represented or suggested state of affairs to be other than it
16 actually is; and failing to reveal facts that are material to the transaction in light of representations of
17 fact made in a positive manner.

18 1173. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
19 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
20 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
21 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
22 including NOx, as described above.

23 1174. Plaintiff and Subclass members reasonably relied upon Defendant's false
24 misrepresentations. They had no way of knowing that Defendant's representations were false and
25 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
26 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
27 their own.

28 1175. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

1 1176. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
2 reasonable consumers.

3 1177. Defendant intentionally and knowingly misrepresented material facts regarding the
4 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

5 1178. Defendant knew or should have known that its conduct violated the New Hampshire
6 CPA.

7 1179. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
8 emissions systems manipulation because Defendant:

- 9 a. Possessed exclusive knowledge that it manipulated the emissions system in the
10 Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions;
12 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
13 c. Made incomplete representations that it manipulated the emissions system in
14 the Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions, while purposefully withholding material facts from Plaintiff and
16 the Subclass that contradicted these representations.

17 1180. Defendant had a duty to disclose that the NOx reduction system in the Affected
18 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
19 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
20 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
21 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
22 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
23 emission vehicles, efficient, and free from defects.

24 1181. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
25 members.

26 1182. Because Defendant's willful conduct caused injury to New Hampshire Subclass
27 members' property through violations of the New Hampshire CPA, Plaintiff and the New Hampshire
28 Subclass seek recovery of actual damages or \$1,000, whichever is greater, treble damages, costs and

1 reasonable attorneys' fees, an order enjoining Defendant's unfair and/or deceptive acts and practices,
2 and any other just and proper relief under N.H. Rev. Stat. § 358-A:10.

3 **COUNT II**

4 **FRAUDULENT CONCEALMENT**
5 **(BASED ON NEW HAMPSHIRE LAW)**

6 1183. Plaintiff incorporates by reference all preceding allegations as though fully set forth
7 herein.

8 1184. Plaintiff brings this claim on behalf of the New Hampshire Subclass against FCA.

9 1185. Defendant intentionally concealed that the NOx reduction system in the Affected
10 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
11 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
12 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
13 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
14 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
15 and denied Plaintiff and the other Subclass members information that is highly relevant to their
16 purchasing decision.

17 1186. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
18 advertising and other forms of communication, including standard and uniform material provided
19 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
20 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
21 properly when driven in normal usage.

22 1187. Defendant knew these representations were false when made.

23 1188. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
24 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
25 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
26 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
27 Affected Vehicles turns off or is limited during normal driving conditions.
28

1 1189. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1190. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1191. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1192. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1193. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1194. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1195. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

1 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
2 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

3 1196. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1197. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1198. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1199. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1200. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1201. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1202. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

DD. Claims Brought on Behalf of the New Jersey Subclass

COUNT I

**VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT
(N.J. STAT. ANN. § 56:8-1 *ET SEQ.*)**

1203. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1204. Plaintiff brings this Count on behalf of the New Jersey Subclass against FCA.

1205. The New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 *et seq.* ("N.J. CFA"), prohibits unfair or deceptive acts or practices in the conduct of any trade or commerce.

1206. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles

1 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
2 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
3 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
4 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
5 particular standard and quality when they are not; failing to reveal a material fact, the omission of
6 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
7 the consumer; making a representation of fact or statement of fact material to the transaction such
8 that a person reasonably believes the represented or suggested state of affairs to be other than it
9 actually is; and failing to reveal facts that are material to the transaction in light of representations of
10 fact made in a positive manner.

11 1207. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
12 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
14 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
15 including NOx, as described above.

16 1208. Plaintiff and Subclass members reasonably relied upon Defendant's false
17 misrepresentations. They had no way of knowing that Defendant's representations were false and
18 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
19 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
20 their own.

21 1209. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

22 1210. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
23 reasonable consumers.

24 1211. Defendant intentionally and knowingly misrepresented material facts regarding the
25 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

26 1212. Defendant knew or should have known that its conduct violated the N.J. CFA.

27 1213. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1214. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1215. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1216. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass and Subclass members.

1217. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

1218. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1219. Pursuant to N.J. Stat. Ann. § 56:8-20, Plaintiff will serve the New Jersey Attorney General with a copy of this Complaint within 10 days of filing.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON NEW JERSEY LAW)**

1220. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1221. Plaintiff brings this Count on behalf of the New Jersey Subclass against FCA.

1222. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1223. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1224. Defendant knew these representations were false when made.

1225. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1226. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1227. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1228. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1229. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1230. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1231. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1232. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1233. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1234. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1235. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1236. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1237. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1238. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1239. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

EE. Claims Brought on Behalf of the New Mexico Subclass

COUNT I

**VIOLATIONS OF THE NEW MEXICO UNFAIR
TRADE PRACTICES ACT
(N.M. STAT. ANN. § 57-12-1 ET SEQ.)**

1240. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1241. This claim is brought on behalf of the New Mexico Subclass against FCA.

1242. Defendant, Plaintiff, and New Mexico Subclass members are or were "person[s]" under the New Mexico Unfair Trade Practices Act ("New Mexico UTPA"), N.M. Stat. Ann. § 57-12-2. 010549-11 816608 V1

1243. Defendant's actions as set forth herein occurred in the conduct of trade or commerce as defined under N.M. Stat. Ann. § 57-12-2.

1244. The New Mexico UTPA makes unlawful "a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services ... by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person," including but not

1 limited to “failing to state a material fact if doing so deceives or tends to deceive.” N.M. Stat. Ann.
2 § 57-12- 2(D). Defendant’s acts and omissions described herein constitute unfair or deceptive acts or
3 practices under N.M. Stat. Ann. § 57-12-2(D). In addition, Defendant’s actions constitute
4 unconscionable actions under N.M. Stat. Ann. § 57-12-2(E), since they took advantage of the lack of
5 knowledge, ability, experience, and capacity of the New Mexico Subclass members to a grossly
6 unfair degree.

7 1245. In the course of Defendant’s business, Defendant willfully failed to disclose and
8 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
9 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
10 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
11 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
12 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
13 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
14 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
15 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
16 particular standard and quality when they are not; failing to reveal a material fact, the omission of
17 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
18 the consumer; making a representation of fact or statement of fact material to the transaction such
19 that a person reasonably believes the represented or suggested state of affairs to be other than it
20 actually is; and failing to reveal facts that are material to the transaction in light of representations of
21 fact made in a positive manner.

22 1246. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 1247. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 1248. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 1249. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 1250. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 1251. Defendant knew or should have known that its conduct violated the New Mexico
10 UTPA.

11 1252. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
12 emissions systems manipulation because Defendant:

- 13 a. Possessed exclusive knowledge that it manipulated the emissions system in the
14 Affected Vehicles to turn off or limit effectiveness in normal driving
15 conditions;
- 16 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
17 c. Made incomplete representations that it manipulated the emissions system in
18 the Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions, while purposefully withholding material facts from Plaintiff and
20 the Subclass that contradicted these representations.

21 1253. Defendant had a duty to disclose that the NOx reduction system in the Affected
22 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
23 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
24 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
25 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
26 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
27 emission vehicles, efficient, and free from defects.

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1262. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1263. Defendant knew these representations were false when made.

9 1264. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1265. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1266. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1267. The truth about the defective emissions controls and Defendant's manipulations of
2 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1268. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
7 had no way of knowing that Defendant's representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles' emissions.

11 1269. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1270. Defendant's false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1271. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1272. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1273. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1274. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1275. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1276. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1277. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1278. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

FF. Claims Brought on Behalf of the New York Subclass

COUNT I

**VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349
(N.Y. GEN. BUS. LAW § 349)**

1279. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1280. This claim is brought on behalf of the New York Subclass against FCA.

1281. New York's General Business Law § 349 makes unlawful "[d]eceptive acts or practices in the conduct of any business, trade or commerce." In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. The challenged act or practice was "consumer-oriented;" (2) that the act or practice was misleading in a material way; and (3) Plaintiff suffered injury as a result of the deceptive act or practice. Accordingly, Defendant has violated General Business Law § 349.

1282. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by

1 the consumer; making a representation of fact or statement of fact material to the transaction such
2 that a person reasonably believes the represented or suggested state of affairs to be other than it
3 actually is; and failing to reveal facts that are material to the transaction in light of representations of
4 fact made in a positive manner.

5 1283. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
6 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
7 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
8 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
9 including NOx, as described above.

10 1284. Plaintiff and Subclass members reasonably relied upon Defendant's false
11 misrepresentations. They had no way of knowing that Defendant's representations were false and
12 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
13 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
14 their own.

15 1285. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

16 1286. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
17 reasonable consumers.

18 1287. Defendant intentionally and knowingly misrepresented material facts regarding the
19 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

20 1288. Defendant knew or should have known that its conduct violated New York's General
21 Business Law § 349.

22 1289. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
23 emissions systems manipulation because Defendant:

- 24 a. Possessed exclusive knowledge that it manipulated the emissions system in the
25 Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions;
27 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
28

1 1297. New York’s General Business Law § 350 makes unlawful “[f]alse advertising in the
2 conduct of any business, trade or commerce[.]” False advertising includes “advertising, including
3 labeling, of a commodity ... if such advertising is misleading in a material respect,” taking into
4 account “the extent to which the advertising fails to reveal facts material in the light of ...
5 representations [made] with respect to the commodity.” N.Y. Gen. Bus. Law § 350-a.

6 1298. Defendant caused to be made or disseminated throughout New York, through
7 advertising, marketing, and other publications, statements that were untrue or misleading, and which
8 were known, or which by the exercise of reasonable care should have been known to Defendant, to
9 be untrue and misleading to consumers, including Plaintiff and the other Subclass members.

10 1299. Defendant has violated N.Y. Gen. Bus. Law § 350 because of the misrepresentations
11 and omissions alleged herein, including, but not limited to, Defendant’s failure to disclose that the
12 NOx reduction system in the Affected Vehicles turns off or is limited during normal driving
13 conditions.

14 1300. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
15 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
16 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
17 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
18 including NOx, as described above.

19 1301. Plaintiff and Subclass members reasonably relied upon Defendant’s false
20 misrepresentations. They had no way of knowing that Defendant’s representations were false and
21 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
22 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
23 their own.

24 1302. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

25 1303. Defendant’s unfair or deceptive acts or practices were likely to and did in fact deceive
26 reasonable consumers.

27 1304. Defendant intentionally and knowingly misrepresented material facts regarding the
28 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1 1305. Defendant knew or should have known that its conduct violated General Business
2 Law § 350.

3 1306. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
4 emissions systems manipulation because Defendant:

- 5 a. Possessed exclusive knowledge that it manipulated the emissions system in the
6 Affected Vehicles to turn off or limit effectiveness in normal driving
7 conditions;
- 8 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 9 c. Made incomplete representations that it manipulated the emissions system in
10 the Affected Vehicles to turn off or limit effectiveness in normal driving
11 conditions, while purposefully withholding material facts from Plaintiff and
12 the Subclass that contradicted these representations.

13 1307. Defendant had a duty to disclose that the NOx reduction system in the Affected
14 Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles were
15 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
16 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
17 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
18 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
19 emission vehicles, efficient, and free from defects.

20 1308. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
21 members.

22 1309. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
23 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
24 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
25 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
26 direct and natural consequence of Defendant’s misrepresentations and omissions.

27 1310. Defendant’s violations present a continuing risk to Plaintiff as well as to the general
28 public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1311. Plaintiff and the other Subclass members are entitled to recover their actual damages or \$500, whichever is greater. Because Defendant acted willfully or knowingly, Plaintiff and the other Subclass members are entitled to recover three times actual damages, up to \$10,000.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON NEW YORK LAW)

1312. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1313. This claim is brought on behalf of the New York Subclass against FCA.

1314. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1315. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1316. Defendant knew these representations were false when made.

1317. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1 1318. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1319. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1320. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1321. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1322. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1323. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1324. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

1 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
2 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

3 1325. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1326. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1327. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1328. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1329. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1330. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1331. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

GG. Claims Brought on Behalf of the North Carolina Subclass

COUNT I

**VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND
DECEPTIVE ACTS AND PRACTICES ACT
(N.C. GEN. STAT. § 75-1.1 ET SEQ.)**

1332. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1333. Plaintiff brings this Count on behalf of the North Carolina Subclass against FCA.

1334. Defendant engaged in "commerce" within the meaning of N.C. Gen. Stat. § 75-1.1(b).

1335. The North Carolina UDTPA broadly prohibits "unfair or deceptive acts or practices in or affecting commerce." N.C. Gen. Stat. § 75-1.1(a). In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as

1 described above. Accordingly, Defendant engaged in unfair and deceptive trade practices because it
2 (1) had the capacity or tendency to deceive, (2) offend public policy, (3) are immoral, unethical,
3 oppressive, or unscrupulous, or (4) cause substantial injury to consumers.

4 1336. In the course of Defendant's business, Defendant willfully failed to disclose and
5 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
6 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
7 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
8 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
9 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
10 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
11 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
12 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
13 particular standard and quality when they are not; failing to reveal a material fact, the omission of
14 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
15 the consumer; making a representation of fact or statement of fact material to the transaction such
16 that a person reasonably believes the represented or suggested state of affairs to be other than it
17 actually is; and failing to reveal facts that are material to the transaction in light of representations of
18 fact made in a positive manner.

19 1337. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
20 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
21 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
22 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
23 including NOx, as described above.

24 1338. Plaintiff and Subclass members reasonably relied upon Defendant's false
25 misrepresentations. They had no way of knowing that Defendant's representations were false and
26 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
27 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
28 their own.

1339. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

1340. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers.

1341. Defendant intentionally and knowingly misrepresented material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the Subclass.

1342. Defendant knew or should have known that its conduct violated the North Carolina UDTPA.

1343. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1344. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant's material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1345. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass members.

1346. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and

1 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
2 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
3 direct and natural consequence of Defendant's misrepresentations and omissions.

4 1347. Defendant's violations present a continuing risk to Plaintiff as well as to the general
5 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

6 1348. Plaintiff seeks an order for treble his actual damages, court costs, attorney's fees, and
7 any other just and proper relief available under the North Carolina Act, N.C. Gen. Stat. § 75-16.

8 1349. Plaintiff also seeks punitive damages against Defendant because Defendant's conduct
9 was malicious, willful, reckless, wanton, fraudulent and in bad faith.

10 **COUNT II**

11 **FRAUDULENT CONCEALMENT** 12 **(BASED ON NORTH CAROLINA LAW)**

13 1350. Plaintiff incorporates by reference all preceding allegations as though fully set forth
14 herein.

15 1351. This claim is brought on behalf of the North Carolina Subclass against FCA.

16 1352. Defendant intentionally concealed that the NOx reduction system in the Affected
17 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
18 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
19 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
20 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
21 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
22 and denied Plaintiff and the other Subclass members information that is highly relevant to their
23 purchasing decision.

24 1353. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
25 advertising and other forms of communication, including standard and uniform material provided
26 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
27 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
28 properly when driven in normal usage.

1 1354. Defendant knew these representations were false when made.

2 1355. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
3 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
4 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
5 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
6 Affected Vehicles turns off or is limited during normal driving conditions.

7 1356. Defendant had a duty to disclose that the NOx reduction system in the Affected
8 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
9 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
10 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
11 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
12 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
13 emission vehicles, efficient, and free from defects.

14 1357. As alleged in this Complaint, at all relevant times, Defendant has held out the
15 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
16 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
17 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
18 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
19 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
20 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
21 making other disclosures about the emission system deceptive.

22 1358. The truth about the defective emissions controls and Defendant's manipulations of
23 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
24 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
25 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
26 members.

27 1359. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
28 had no way of knowing that Defendant's representations were false and/or misleading. As

1 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
3 true facts about the Affected Vehicles' emissions.

4 1360. Defendant also concealed and suppressed material facts concerning what is evidently
5 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
6 compliance with federal and state clean air laws and emissions regulations that are meant to protect
7 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
8 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
9 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
10 environment. And yet, that is precisely what the Affected Vehicles are doing.

11 1361. Defendant's false representations were material to consumers because they concerned
12 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
13 state laws and regulations regarding clean air and emissions, and also because the representations
14 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
15 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
16 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

17 1362. Defendant had a duty to disclose the emissions defect, defective design of emissions
18 controls, and violations with respect to the Affected Vehicles because details of the true facts were
19 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
20 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
21 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
22 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
23 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
24 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
25 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
26 respect to compliance with federal and state clean air laws and emissions regulations, and
27 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
28 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial

1 truth, but the entire truth. These omitted and concealed facts were material because they directly
2 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
3 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
4 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
5 or non-compliance, are material concerns to a consumer, including with respect to the emissions
6 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
7 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
8 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

9 1363. Defendant actively concealed and/or suppressed these material facts, in whole or in
10 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
11 vehicles and did not or could not comply with federal and state laws governing clean air and
12 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
13 at the expense of Plaintiff and Subclass members.

14 1364. Defendant still has not made full and adequate disclosures, and continues to defraud
15 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
16 of the Affected Vehicles.

17 1365. Plaintiff and Subclass members were unaware of the omitted material facts referenced
18 herein, and they would not have acted as they did if they had known of the concealed and/or
19 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
20 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
21 vehicles, or would have taken other affirmative steps in light of the information concealed from
22 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
23 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
24 members.

25 1366. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
26 members have sustained damage because they own vehicles that are diminished in value as a result
27 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
28 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the

1 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
 2 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
 3 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
 4 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 5 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 6 or would not have purchased or leased them at all.

7 1367. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 8 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 9 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 10 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 11 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 12 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 13 vehicles.

14 1368. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 15 amount to be proven at trial.

16 1369. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 17 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 18 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 19 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 20 future, which amount is to be determined according to proof.

21 **HH. Claims Brought on Behalf of the North Dakota Subclass**

22 **COUNT I**

23 **VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT** 24 **(N.D. CENT. CODE § 51-15-02)**

25 1370. Plaintiff incorporates by reference all preceding allegations as though fully set forth
 26 herein.

27 1371. This claim is brought on behalf of the North Dakota Subclass against FCA.

1 1372. Plaintiff, North Dakota Subclass members, and Defendant are “persons” within the
2 meaning of N.D. Cent. Code § 51-15-02(4).

3 1373. Defendant engaged in the “sale” of “merchandise” within the meaning of N.D. Cent.
4 Code § 51-15-02(3), (5).

5 1374. The North Dakota Consumer Fraud Act (“North Dakota CFA”) makes unlawful “[t]he
6 act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false
7 promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or
8 advertisement of any merchandise.” N.D. Cent. Code § 51-15-02. As set forth above and below,
9 Defendant committed deceptive acts or practices, with the intent that North Dakota Subclass
10 members rely thereon in connection with their purchase or lease of the Affected Vehicles.

11 1375. In the course of Defendant’s business, Defendant willfully failed to disclose and
12 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
13 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
14 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
15 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
16 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
17 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
18 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
19 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
20 particular standard and quality when they are not; failing to reveal a material fact, the omission of
21 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
22 the consumer; making a representation of fact or statement of fact material to the transaction such
23 that a person reasonably believes the represented or suggested state of affairs to be other than it
24 actually is; and failing to reveal facts that are material to the transaction in light of representations of
25 fact made in a positive manner.

26 1376. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
27 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
28 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions

1 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
2 including NOx, as described above.

3 1377. Plaintiff and Subclass members reasonably relied upon Defendant's false
4 misrepresentations. They had no way of knowing that Defendant's representations were false and
5 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
6 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own.

8 1378. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

9 1379. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
10 reasonable consumers.

11 1380. Defendant intentionally and knowingly misrepresented material facts regarding the
12 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

13 1381. Defendant knew or should have known that its conduct violated the North Dakota
14 CFA.

15 1382. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
16 emissions systems manipulation because Defendant:

- 17 a. Possessed exclusive knowledge that it manipulated the emissions system in the
18 Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions;
- 20 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 21 c. Made incomplete representations that it manipulated the emissions system in
22 the Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions, while purposefully withholding material facts from Plaintiff and
24 the Subclass that contradicted these representations.

25 1383. Defendant had a duty to disclose that the NOx reduction system in the Affected
26 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
27 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
28 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 1384. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 1385. Defendant's violations present a continuing risk to Plaintiff as well as to the general
7 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

8 1386. As a direct and proximate result of Defendant's violations of the North Dakota CFA,
9 Plaintiff and the North Dakota Subclass have suffered injury in fact and/or actual damage.

10 1387. North Dakota Subclass members seek punitive damages against Defendant because
11 Defendant's conduct was egregious. Defendant's egregious conduct warrants punitive damages.

12 1388. Further, Defendant knowingly committed the conduct described above, and thus,
13 under N.D. Cent. Code § 51-15-09, Defendant is liable to Plaintiff and the North Dakota Subclass for
14 treble damages in amounts to be proven at trial, as well as attorneys' fees, costs, and disbursements.
15 Plaintiff further seeks an order enjoining Defendant's unfair and/or deceptive acts or practices, and
16 other just and proper available relief under the North Dakota CFA.

17 **COUNT II**

18 **FRAUDULENT CONCEALMENT** 19 **(BASED ON NORTH DAKOTA LAW)**

20 1389. Plaintiff incorporates by reference all preceding allegations as though fully set forth
21 herein.

22 1390. Plaintiff brings this Count on behalf of the North Dakota Subclass against FCA.

23 1391. Defendant intentionally concealed that the NOx reduction system in the Affected
24 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
25 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
26 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
27 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
28 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1392. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1393. Defendant knew these representations were false when made.

9 1394. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1395. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1396. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1397. The truth about the defective emissions controls and Defendant's manipulations of
2 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1398. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
7 had no way of knowing that Defendant's representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles' emissions.

11 1399. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1400. Defendant's false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1401. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1402. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1403. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1404. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1405. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1406. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1407. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1408. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

II. Claims Brought on Behalf of the Ohio Subclass

COUNT I

**VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT
(OHIO REV. CODE § 1345.01 *ET SEQ.*)**

1409. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1410. This claim is brought on behalf of the Ohio Subclass against FCA.

1411. Plaintiff and the other Ohio Subclass members are “consumers” as defined by the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01 (“Ohio CSPA”). Defendant is a “supplier” as defined by the Ohio CSPA. Plaintiff’s and the other Ohio Subclass members’ purchases or leases of Affected Vehicles were “consumer transactions” as defined by the Ohio CSPA.

1412. The Ohio CSPA, Ohio Rev. Code § 1345.02, broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Specifically, and without limitation of the broad prohibition, the Act prohibits suppliers from representing (i) that goods have characteristics or uses or benefits which they do not have; (ii) that their goods are of a particular quality or grade they are not; and (iii) the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not. *Id.* Defendant’s conduct as alleged above and below constitutes unfair and/or deceptive consumer sales practices in violation of Ohio Rev. Code § 1345.02.

1413. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics,

1 uses, benefits, and qualities which they do not have; representing the that Affected Vehicles are of a
2 particular standard and quality when they are not; failing to reveal a material fact, the omission of
3 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
4 the consumer; making a representation of fact or statement of fact material to the transaction such
5 that a person reasonably believes the represented or suggested state of affairs to be other than it
6 actually is; and failing to reveal facts that are material to the transaction in light of representations of
7 fact made in a positive manner.

8 1414. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
9 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
10 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
11 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
12 including NOx, as described above.

13 1415. Plaintiff and Subclass members reasonably relied upon Defendant's false
14 misrepresentations. They had no way of knowing that Defendant's representations were false and
15 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
16 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
17 their own.

18 1416. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

19 1417. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
20 reasonable consumers.

21 1418. Defendant intentionally and knowingly misrepresented material facts regarding the
22 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

23 1419. Defendant knew or should have known that its conduct violated the Ohio CSPA.

24 1420. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
25 emissions systems manipulation because Defendant:

- 26 a. Possessed exclusive knowledge that it manipulated the emissions system in the
27 Affected Vehicles to turn off or limit effectiveness in normal driving
28 conditions;

- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1421. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1422. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1423. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

1424. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1425. Plaintiff and the Subclass sustained damages as a result of Defendant’s unlawful acts and are, therefore, entitled to damages and other relief as provided under the Ohio CSPA.

1426. Plaintiff also seeks court costs and attorneys’ fees as a result of Defendant’s violations of the OCSPA as provided in Ohio Rev. Code § 1345.09.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON OHIO LAW)**

1427. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1428. This claim is brought on behalf of the Ohio Subclass against FCA.

1429. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1430. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1431. Defendant knew these representations were false when made.

1432. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1433. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1434. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1435. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1436. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1437. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1438. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1439. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1440. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1441. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1442. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1443. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1444. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 5 vehicles.

6 1445. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 7 amount to be proven at trial.

8 1446. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 12 future, which amount is to be determined according to proof.

JJ. Claims Brought on Behalf of the Oklahoma Subclass

COUNT I

VIOLATION OF OKLAHOMA CONSUMER PROTECTION ACT (OKLA. STAT. TIT. 15 § 751 ET SEQ.)

16 1447. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

17 1448. Plaintiff brings this Count on behalf of the Oklahoma Subclass against FCA.

18 1449. Plaintiff and the Oklahoma Subclass members are "persons" under the Oklahoma
 19 Consumer Protection Act ("Oklahoma CPA"), Okla. Stat. tit. 15 § 752.

20 1450. Defendant is a "person," "corporation," or "association" within the meaning of Okla.
 21 Stat. tit. 15 § 15-751(1).

22 1451. The sale or lease of the Affected Vehicles to the Oklahoma Subclass members was a
 23 "consumer transaction" within the meaning of Okla. Stat. tit. 15 § 752, and Defendant's actions as
 24 set forth herein occurred in the conduct of trade or commerce.

25 1452. The Oklahoma CPA declares unlawful, *inter alia*, the following acts or practices
 26 when committed in the course of business: "mak[ing] a false or misleading representation,
 27 knowingly or with reason to know, as to the characteristics, ... uses, [or] benefits, of the subject of a
 28

1 consumer transaction,” or making a false representation, “knowingly or with reason to know, that the
2 subject of a consumer transaction is of a particular standard, style or model, if it is of another or
3 “[a]dvertis[ing], knowingly or with reason to know, the subject of a consumer transaction with intent
4 not to sell it as advertised;” and otherwise committing “an unfair or deceptive trade practice.” *See*
5 Okla. Stat. tit. 15, § 753.

6 1453. In the course of Defendant’s business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1454. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1455. Plaintiff and Subclass members reasonably relied upon Defendant’s false
27 misrepresentations. They had no way of knowing that Defendant’s representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1456. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1457. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1458. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1459. Defendant knew or should have known that its conduct violated the Oklahoma CPA.

9 1460. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1461. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1462. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 1463. Plaintiff and the Oklahoma Subclass suffered ascertainable loss caused by
2 Defendant's misrepresentations and concealment of and failure to disclose material information.

3 1464. Defendant's unlawful acts and practices complained of herein affect the public
4 interest.

5 1465. As a direct and proximate result of Defendant's violations of the Oklahoma CPA,
6 Plaintiff and the Oklahoma Subclass have suffered injury in fact and/or actual damage.

7 1466. Defendant's conduct as alleged herein was unconscionable because (1) Defendant,
8 knowingly or with reason to know, took advantage of consumers reasonably unable to protect their
9 interests because of their age, physical infirmity, ignorance, illiteracy, inability to understand the
10 language of an agreement or similar factor; (2) at the time the consumer transaction was entered into,
11 Defendant knew or had reason to know that price grossly exceeded the price at which similar
12 vehicles were readily obtainable in similar transactions by like consumers; and (3) Defendant knew
13 or had reason to know that the transaction Defendant induced the consumer to enter into was
14 excessively one-sided in favor of Defendant.

15 1467. Because Defendant's unconscionable conduct caused injury to Oklahoma Subclass
16 members, Plaintiff and the Oklahoma Subclass seek recovery of actual damages, discretionary
17 penalties up to \$2,000 per violation, punitive damages, and reasonable attorneys' fees, under Okla.
18 Stat. tit. 15 § 761.1. Plaintiff and the Oklahoma Subclass further seek an order enjoining
19 Defendant's unfair and/or deceptive acts or practices, and any other just and proper relief available
20 under the Oklahoma CPA.

21 **COUNT II**

22 **FRAUDULENT CONCEALMENT**
23 **(BASED ON OKLAHOMA LAW)**

24 1468. Plaintiff incorporates by reference all preceding allegations as though fully set forth
25 herein.

26 1469. Plaintiff brings this Count on behalf of the Oklahoma Subclass against FCA.

27 1470. Defendant intentionally concealed that the NOx reduction system in the Affected
28 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had

1 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
2 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
3 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
4 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
5 and denied Plaintiff and the other Subclass members information that is highly relevant to their
6 purchasing decision.

7 1471. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
8 advertising and other forms of communication, including standard and uniform material provided
9 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
10 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
11 properly when driven in normal usage.

12 1472. Defendant knew these representations were false when made.

13 1473. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
14 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
15 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
16 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
17 Affected Vehicles turns off or is limited during normal driving conditions.

18 1474. Defendant had a duty to disclose that the NOx reduction system in the Affected
19 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
20 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
21 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
22 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
23 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
24 emission vehicles, efficient, and free from defects.

25 1475. As alleged in this Complaint, at all relevant times, Defendant has held out the
26 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
27 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
28 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during

1 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
2 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
3 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
4 making other disclosures about the emission system deceptive.

5 1476. The truth about the defective emissions controls and Defendant’s manipulations of
6 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
7 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
8 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
9 members.

10 1477. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
11 had no way of knowing that Defendant’s representations were false and/or misleading. As
12 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
13 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
14 true facts about the Affected Vehicles’ emissions.

15 1478. Defendant also concealed and suppressed material facts concerning what is evidently
16 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
17 compliance with federal and state clean air laws and emissions regulations that are meant to protect
18 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
19 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
20 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
21 environment. And yet, that is precisely what the Affected Vehicles are doing.

22 1479. Defendant’s false representations were material to consumers because they concerned
23 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
24 state laws and regulations regarding clean air and emissions, and also because the representations
25 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
26 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
27 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

1 1480. Defendant had a duty to disclose the emissions defect, defective design of emissions
2 controls, and violations with respect to the Affected Vehicles because details of the true facts were
3 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
4 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
5 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
6 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
7 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
8 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
9 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
10 respect to compliance with federal and state clean air laws and emissions regulations, and
11 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
12 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
13 truth, but the entire truth. These omitted and concealed facts were material because they directly
14 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
15 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
16 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
17 or non-compliance, are material concerns to a consumer, including with respect to the emissions
18 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
19 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
20 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

21 1481. Defendant actively concealed and/or suppressed these material facts, in whole or in
22 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
23 vehicles and did not or could not comply with federal and state laws governing clean air and
24 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
25 at the expense of Plaintiff and Subclass members.

26 1482. Defendant still has not made full and adequate disclosures, and continues to defraud
27 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
28 of the Affected Vehicles.

1 1483. Plaintiff and Subclass members were unaware of the omitted material facts referenced
2 herein, and they would not have acted as they did if they had known of the concealed and/or
3 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
4 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
5 vehicles, or would have taken other affirmative steps in light of the information concealed from
6 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
7 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
8 members.

9 1484. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
10 members have sustained damage because they own vehicles that are diminished in value as a result
11 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
12 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
13 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
14 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
15 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
16 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
17 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
18 or would not have purchased or leased them at all.

19 1485. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
20 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
21 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
22 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
23 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
24 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
25 vehicles.

26 1486. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
27 amount to be proven at trial.
28

1487. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

KK. Claims Brought on Behalf of the Pennsylvania Subclass

COUNT I

**VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND
CONSUMER PROTECTION LAW
(73 P.S. § 201-1 ET SEQ.)**

1488. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1489. Plaintiff brings this Count on behalf of the Pennsylvania Subclass against FCA.

1490. Plaintiff purchased his Affected Vehicle primarily for personal, family or household purposes within the meaning of 73 P.S. § 201-9.2.

1491. All of the acts complained of herein were perpetrated by Defendant in the course of trade or commerce within the meaning of 73 P.S. § 201-2(3).

1492. The Pennsylvania Unfair Trade Practices and Consumer Protection Law ("Pennsylvania CPL") prohibits unfair or deceptive acts or practices, including: (i) "Representing that goods or services have ... characteristics, ... [b]enefits or qualities that they do not have;" (ii) "Representing that goods or services are of a particular standard, quality or grade ... if they are of another;" (iii) "Advertising goods or services with intent not to sell them as advertised;" and (iv) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding." 73 P.S. § 201-2(4).

1493. In the course of Defendant's business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,

1 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
2 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
3 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
4 particular standard and quality when they are not; failing to reveal a material fact, the omission of
5 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
6 the consumer; making a representation of fact or statement of fact material to the transaction such
7 that a person reasonably believes the represented or suggested state of affairs to be other than it
8 actually is; and failing to reveal facts that are material to the transaction in light of representations of
9 fact made in a positive manner.

10 1494. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
11 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
12 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
13 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
14 including NOx, as described above.

15 1495. Plaintiff and Subclass members reasonably relied upon Defendant's false
16 misrepresentations. They had no way of knowing that Defendant's representations were false and
17 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
18 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
19 their own.

20 1496. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

21 1497. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
22 reasonable consumers.

23 1498. Defendant intentionally and knowingly misrepresented material facts regarding the
24 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

25 1499. Defendant knew or should have known that its conduct violated the Pennsylvania
26 CPL.

27 1500. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
28 emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1501. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1502. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1503. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

1504. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1505. Defendant is liable to Plaintiff and the Pennsylvania Subclass for treble their actual damages or \$100, whichever is greater, and attorneys’ fees and costs. 73 P.S. § 201-9.2(a). Plaintiff and the Pennsylvania Subclass members are also entitled to an award of punitive damages given that

1 Defendant's conduct was malicious, wanton, willful, oppressive, or exhibited a reckless indifference
2 to the rights of others.

3 **COUNT II**

4 **FRAUDULENT CONCEALMENT**
5 **(BASED ON PENNSYLVANIA LAW)**

6 1506. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

7 1507. This claim is brought on behalf of the Pennsylvania Subclass against FCA.

8 1508. Defendant intentionally concealed that the NOx reduction system in the Affected
9 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
10 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
11 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
13 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
14 and denied Plaintiff and the other Subclass members information that is highly relevant to their
15 purchasing decision.

16 1509. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
17 advertising and other forms of communication, including standard and uniform material provided
18 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
19 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
20 properly when driven in normal usage.

21 1510. Defendant knew these representations were false when made.

22 1511. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
23 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
24 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
25 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions.

27 1512. Defendant had a duty to disclose that the NOx reduction system in the Affected
28 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were

1 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
2 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
3 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
4 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
5 emission vehicles, efficient, and free from defects.

6 1513. As alleged in this Complaint, at all relevant times, Defendant has held out the
7 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
8 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
9 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
10 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
11 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
12 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
13 making other disclosures about the emission system deceptive.

14 1514. The truth about the defective emissions controls and Defendant’s manipulations of
15 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
16 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
17 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
18 members.

19 1515. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
20 had no way of knowing that Defendant’s representations were false and/or misleading. As
21 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
22 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
23 true facts about the Affected Vehicles’ emissions.

24 1516. Defendant also concealed and suppressed material facts concerning what is evidently
25 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
26 compliance with federal and state clean air laws and emissions regulations that are meant to protect
27 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
28 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1517. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1518. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1519. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1520. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1521. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1522. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1523. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1524. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1525. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

LL. Claims Brought on Behalf of the Rhode Island Subclass

COUNT I

VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT (R.I. GEN. LAWS § 6-13.1 ET SEQ.)

1526. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1527. Plaintiff brings this Count on behalf of the Rhode Island Subclass against FCA.

1528. Plaintiff is a person who purchased an Affected Vehicle primarily for personal, family, or household purposes within the meaning of R.I. Gen. Laws § 6-13.1-5.2(a).

1529. Rhode Island's Unfair Trade Practices and Consumer Protection Act ("Rhode Island CPA") prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" including: "(v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have"; "(vii) Representing that goods or services are of a particular standard, quality, or grade, ... if they are of another"; "(ix) Advertising goods or services with intent not to sell them as advertised"; "(xii) Engaging in any other conduct that similarly creates a likelihood of confusion or of misunderstanding"; "(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer"; and "(xiv) Using any other methods, acts or

1 practices which mislead or deceive members of the public in a material respect.” R.I. Gen. Laws § 6-
2 13.1-1(6).

3 1530. Defendant engaged in unlawful trade practices, including: (1) representing that the
4 Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; (2)
5 representing that the Affected Vehicles are of a particular standard and quality when they are not; (3)
6 advertising the Affected Vehicles with the intent not to sell them as advertised; and (4) otherwise
7 engaging in conduct that is unfair or deceptive and likely to deceive.

8 1531. Defendant’s actions as set forth above occurred in the conduct of trade or commerce.

9 1532. In the course of Defendant’s business, Defendant willfully failed to disclose and
10 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
11 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
12 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
13 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
14 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
15 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
16 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
17 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
18 particular standard and quality when they are not; failing to reveal a material fact, the omission of
19 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
20 the consumer; making a representation of fact or statement of fact material to the transaction such
21 that a person reasonably believes the represented or suggested state of affairs to be other than it
22 actually is; and failing to reveal facts that are material to the transaction in light of representations of
23 fact made in a positive manner.

24 1533. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
25 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
27 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
28 including NOx, as described above.

1 1534. Plaintiff and Subclass members reasonably relied upon Defendant's false
2 misrepresentations. They had no way of knowing that Defendant's representations were false and
3 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
4 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
5 their own.

6 1535. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

7 1536. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
8 reasonable consumers.

9 1537. Defendant intentionally and knowingly misrepresented material facts regarding the
10 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

11 1538. Defendant knew or should have known that its conduct violated the Rhode Island
12 CPA.

13 1539. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
14 emissions systems manipulation because Defendant:

- 15 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 16 Affected Vehicles to turn off or limit effectiveness in normal driving
- 17 conditions;
- 18 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 19 c. Made incomplete representations that it manipulated the emissions system in
- 20 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 21 conditions, while purposefully withholding material facts from Plaintiff and
- 22 the Subclass that contradicted these representations.

23 1540. Defendant had a duty to disclose that the NOx reduction system in the Affected
24 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
25 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
26 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
27 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
28

1 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
2 emission vehicles, efficient, and free from defects.

3 1541. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
4 members.

5 1542. Plaintiff and the Rhode Island Subclass suffered ascertainable loss caused by
6 Defendant's misrepresentations and concealment of and failure to disclose material information.
7 Plaintiff who purchased the Affected Vehicles either would have paid less for their vehicles or would
8 not have purchased or leased them at all.

9 1654. Defendant's unlawful acts and practices complained of herein affect the public
10 interest.

11 1655. As a direct and proximate result of Defendant's violations of the Rhode Island CPA,
12 Plaintiff and the Rhode Island Subclass have suffered injury in fact and/or actual damage.

13 1656. Plaintiff and Rhode Island Subclass members are entitled to recover the greater of
14 actual damages or \$200 pursuant to R.I. Gen. Laws § 6-13.1-5.2(a). Plaintiff also seeks punitive
15 damages in the discretion of the Court because of Defendant's egregious disregard of consumer and
16 public safety and their long-running concealment of the serious safety defects and their tragic
17 consequences.

18 **COUNT II**

19 **FRAUDULENT CONCEALMENT** 20 **(BASED ON RHODE ISLAND LAW)**

21 1543. Plaintiff incorporates by reference all preceding allegations as though fully set forth
22 herein.

23 1544. Plaintiff brings this Count on behalf of the Rhode Island Subclass against FCA.

24 1545. Defendant intentionally concealed that the NOx reduction system in the Affected
25 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
26 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
27 emitted pollutants higher than a reasonable consumer would expect in light of Defendant's
28 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-

1 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
2 and denied Plaintiff and the other Subclass members information that is highly relevant to their
3 purchasing decision.

4 1546. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
5 advertising and other forms of communication, including standard and uniform material provided
6 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
7 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
8 properly when driven in normal usage.

9 1547. Defendant knew these representations were false when made.

10 1548. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
11 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
12 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
13 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
14 Affected Vehicles turns off or is limited during normal driving conditions.

15 1549. Defendant had a duty to disclose that the NOx reduction system in the Affected
16 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
17 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
18 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
19 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
20 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
21 emission vehicles, efficient, and free from defects.

22 1550. As alleged in this Complaint, at all relevant times, Defendant has held out the
23 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
24 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
25 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
26 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
27 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
28

1 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
2 making other disclosures about the emission system deceptive.

3 1551. The truth about the defective emissions controls and Defendant's manipulations of
4 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
5 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
6 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
7 members.

8 1552. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
9 had no way of knowing that Defendant's representations were false and/or misleading. As
10 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
11 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
12 true facts about the Affected Vehicles' emissions.

13 1553. Defendant also concealed and suppressed material facts concerning what is evidently
14 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
15 compliance with federal and state clean air laws and emissions regulations that are meant to protect
16 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
17 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
18 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
19 environment. And yet, that is precisely what the Affected Vehicles are doing.

20 1554. Defendant's false representations were material to consumers because they concerned
21 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
22 state laws and regulations regarding clean air and emissions, and also because the representations
23 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
24 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
25 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

26 1555. Defendant had a duty to disclose the emissions defect, defective design of emissions
27 controls, and violations with respect to the Affected Vehicles because details of the true facts were
28 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such

1 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
2 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
3 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
4 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
5 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
6 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
7 respect to compliance with federal and state clean air laws and emissions regulations, and
8 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
9 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
10 truth, but the entire truth. These omitted and concealed facts were material because they directly
11 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
12 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
13 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
14 or non-compliance, are material concerns to a consumer, including with respect to the emissions
15 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
16 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
17 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

18 1556. Defendant actively concealed and/or suppressed these material facts, in whole or in
19 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
20 vehicles and did not or could not comply with federal and state laws governing clean air and
21 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
22 at the expense of Plaintiff and Subclass members.

23 1557. Defendant still has not made full and adequate disclosures, and continues to defraud
24 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
25 of the Affected Vehicles.

26 1558. Plaintiff and Subclass members were unaware of the omitted material facts referenced
27 herein, and they would not have acted as they did if they had known of the concealed and/or
28 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars

1 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
2 vehicles, or would have taken other affirmative steps in light of the information concealed from
3 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
4 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
5 members.

6 1559. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
7 members have sustained damage because they own vehicles that are diminished in value as a result
8 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
9 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
10 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
11 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
12 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
13 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
14 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
15 or would not have purchased or leased them at all.

16 1560. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
17 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
18 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
19 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
20 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
21 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
22 vehicles.

23 1561. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
24 amount to be proven at trial.

25 1562. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
26 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
27 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
28

warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

MM. Claims Brought on Behalf of the South Carolina Subclass

COUNT I

**VIOLATIONS OF THE SOUTH CAROLINA
UNFAIR TRADE PRACTICES ACT
(S.C. CODE ANN. § 39-5-10 *ET SEQ.*)**

1563. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1564. This claim is brought on behalf of the South Carolina Subclass against FCA.

1565. Defendant is a “person” under S.C. Code Ann. § 39-5-10.

1566. The South Carolina Unfair Trade Practices Act (“South Carolina UTPA”) prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.” S.C. Code Ann. § 39-5-20(a).

1567. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1 1568. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
2 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
3 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
4 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
5 including NOx, as described above.

6 1569. Plaintiff and Subclass members reasonably relied upon Defendant's false
7 misrepresentations. They had no way of knowing that Defendant's representations were false and
8 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
9 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
10 their own.

11 1570. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

12 1571. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
13 reasonable consumers.

14 1572. Defendant intentionally and knowingly misrepresented material facts regarding the
15 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

16 1573. Defendant knew or should have known that its conduct violated the South Carolina
17 UTPA.

18 1574. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
19 emissions systems manipulation because Defendant:

- 20 a. Possessed exclusive knowledge that it manipulated the emissions system in the
21 Affected Vehicles to turn off or limit effectiveness in normal driving
22 conditions;
- 23 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 24 c. Made incomplete representations that it manipulated the emissions system in
25 the Affected Vehicles to turn off or limit effectiveness in normal driving
26 conditions, while purposefully withholding material facts from Plaintiff and
27 the Subclass that contradicted these representations.

1575. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1576. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1577. Plaintiff and the South Carolina Subclass suffered ascertainable loss caused by Defendant’s misrepresentations and concealment of and failure to disclose material information. Plaintiff who purchased the Affected Vehicles either would have paid less for their vehicles or would not have purchased or leased them at all.

1578. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1579. As a direct and proximate result of Defendant’s violations of the South Carolina UTPA, Plaintiff and the South Carolina Subclass have suffered injury in fact and/or actual damage.

1580. Pursuant to S.C. Code Ann. § 39-5-140(a), Plaintiff seeks monetary relief against Defendant to recover for economic losses. Because Defendant’s actions were willful and knowing, Plaintiff’s damages should be trebled. *Id.*

1581. Plaintiff further alleges that Defendant’s malicious and deliberate conduct warrants an assessment of punitive damages because Defendant carried out despicable conduct with willful and conscious disregard of the rights and safety of others, subjecting Plaintiff and the Subclass to cruel and unjust hardship as a result.

COUNT II

VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT (S.C. CODE ANN. § 56-15-10 ET SEQ.)

1582. Plaintiff realleges and incorporates by reference all paragraphs as though fully set forth herein.

1583. This claim is brought only on behalf of the South Carolina Subclass against FCA.

1584. Defendant was a “manufacturer” as set forth in S.C. Code Ann. § 56-15-10, as each was engaged in the business of manufacturing or assembling new and unused motor vehicles.

1585. Defendant committed unfair or deceptive acts or practices that violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act (“Dealers Act”), S.C. Code Ann. § 56-15-30.

1586. Defendant engaged in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiff, the South Carolina Subclass, and to the public.

1587. Defendant’s bad faith and unconscionable actions include, but are not limited to: (1) representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that the Affected Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising the Affected Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving the Affected Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving the Affected Vehicles has been supplied in accordance with a previous representation when it has not.

COUNT III

FRAUDULENT CONCEALMENT (BASED ON SOUTH CAROLINA LAW)

1588. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1589. Plaintiff brings this Count on behalf of the South Carolina Subclass against FCA.

1590. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth

1 and denied Plaintiff and the other Subclass members information that is highly relevant to their
2 purchasing decision.

3 1591. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
4 advertising and other forms of communication, including standard and uniform material provided
5 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
6 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
7 properly when driven in normal usage.

8 1592. Defendant knew these representations were false when made.

9 1593. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
10 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
11 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
12 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
13 Affected Vehicles turns off or is limited during normal driving conditions.

14 1594. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1595. As alleged in this Complaint, at all relevant times, Defendant has held out the
22 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
23 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
24 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
25 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
26 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
27 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
28 making other disclosures about the emission system deceptive.

1 1596. The truth about the defective emissions controls and Defendant's manipulations of
2 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
3 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
4 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
5 members.

6 1597. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
7 had no way of knowing that Defendant's representations were false and/or misleading. As
8 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
9 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
10 true facts about the Affected Vehicles' emissions.

11 1598. Defendant also concealed and suppressed material facts concerning what is evidently
12 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
13 compliance with federal and state clean air laws and emissions regulations that are meant to protect
14 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
15 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
16 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
17 environment. And yet, that is precisely what the Affected Vehicles are doing.

18 1599. Defendant's false representations were material to consumers because they concerned
19 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
20 state laws and regulations regarding clean air and emissions, and also because the representations
21 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
22 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
23 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

24 1600. Defendant had a duty to disclose the emissions defect, defective design of emissions
25 controls, and violations with respect to the Affected Vehicles because details of the true facts were
26 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
27 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
28 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general

1 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
2 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
3 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
4 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
5 respect to compliance with federal and state clean air laws and emissions regulations, and
6 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
7 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
8 truth, but the entire truth. These omitted and concealed facts were material because they directly
9 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
10 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
11 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
12 or non-compliance, are material concerns to a consumer, including with respect to the emissions
13 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
14 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
15 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

16 1601. Defendant actively concealed and/or suppressed these material facts, in whole or in
17 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
18 vehicles and did not or could not comply with federal and state laws governing clean air and
19 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
20 at the expense of Plaintiff and Subclass members.

21 1602. Defendant still has not made full and adequate disclosures, and continues to defraud
22 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
23 of the Affected Vehicles.

24 1603. Plaintiff and Subclass members were unaware of the omitted material facts referenced
25 herein, and they would not have acted as they did if they had known of the concealed and/or
26 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
27 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
28 vehicles, or would have taken other affirmative steps in light of the information concealed from

1 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
2 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
3 members.

4 1604. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
5 members have sustained damage because they own vehicles that are diminished in value as a result
6 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
7 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
8 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
9 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
10 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
11 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
12 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
13 or would not have purchased or leased them at all.

14 1605. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
15 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
16 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
17 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
18 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
19 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
20 vehicles.

21 1606. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
22 amount to be proven at trial.

23 1607. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
25 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
26 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
27 future, which amount is to be determined according to proof.

NN. Claims Brought on Behalf of the Tennessee Subclass

COUNT I

**VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT
(TENN. CODE ANN. § 47-18-101 ET SEQ.)**

1608. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1609. Plaintiff brings this Count on behalf of the Tennessee Subclass against FCA.

1610. Plaintiff and Tennessee Subclass members are “natural persons” and “consumers” within the meaning of Tenn. Code Ann. § 47-18-103(2).

1611. Defendant is a “person” within the meaning of Tenn. Code Ann. § 47-18-103(2).

1612. Defendant’s conduct complained of herein affected “trade,” “commerce” or “consumer transactions” within the meaning of Tenn. Code Ann. § 47-18-103(19).

1613. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits “[u]nfair or deceptive acts or practices affecting the conduct of any trade or commerce,” including but not limited to: “Representing that goods or services have ... characteristics, [or] ... benefits ... that they do not have...;” “Representing that goods or services are of a particular standard, quality or grade ... if they are of another;” “Advertising goods or services with intent not to sell them as advertised;” and “Engaging in any other act or practice which is deceptive to the consumer or any other person.” Tenn. Code Ann. § 47-18-104. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant violated the Tennessee CPA by engaging in unfair or deceptive acts, including representing that the Affected Vehicles have characteristics or benefits that they did not have; representing that the Affected Vehicles are of a particular standard, quality, or grade when they are of another; advertising the Affected Vehicles with intent not to sell them as advertised; and engaging in acts or practices that are deceptive to consumers.

1 1614. In the course of Defendant's business, Defendant willfully failed to disclose and
2 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
3 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
4 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
5 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
6 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
7 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
8 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
9 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
10 particular standard and quality when they are not; failing to reveal a material fact, the omission of
11 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
12 the consumer; making a representation of fact or statement of fact material to the transaction such
13 that a person reasonably believes the represented or suggested state of affairs to be other than it
14 actually is; and failing to reveal facts that are material to the transaction in light of representations of
15 fact made in a positive manner.

16 1615. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
17 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
18 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
19 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
20 including NOx, as described above.

21 1616. Plaintiff and Subclass members reasonably relied upon Defendant's false
22 misrepresentations. They had no way of knowing that Defendant's representations were false and
23 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
24 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
25 their own.

26 1617. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

27 1618. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
28 reasonable consumers.

1 1619. Defendant intentionally and knowingly misrepresented material facts regarding the
2 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

3 1620. Defendant knew or should have known that its conduct violated the Tennessee CPA.

4 1621. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
5 emissions systems manipulation because Defendant:

- 6 a. Possessed exclusive knowledge that it manipulated the emissions system in the
7 Affected Vehicles to turn off or limit effectiveness in normal driving
8 conditions;
- 9 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 10 c. Made incomplete representations that it manipulated the emissions system in
11 the Affected Vehicles to turn off or limit effectiveness in normal driving
12 conditions, while purposefully withholding material facts from Plaintiff and
13 the Subclass that contradicted these representations.

14 1622. Defendant had a duty to disclose that the NOx reduction system in the Affected
15 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
16 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
17 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
18 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
19 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
20 emission vehicles, efficient, and free from defects.

21 1623. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass
22 members.

23 1624. Plaintiff and the other Subclass members were injured and suffered ascertainable loss,
24 injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and
25 the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of
26 their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the
27 direct and natural consequence of Defendant’s misrepresentations and omissions.
28

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 1633. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 1634. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 1635. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 1636. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 1637. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 1638. Defendant's false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 1639. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer's products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 1640. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 1641. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 1642. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 1643. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
 2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
 3 or would not have purchased or leased them at all.

4 1644. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
 5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
 6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
 7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
 8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
 9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
 10 vehicles.

11 1645. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
 12 amount to be proven at trial.

13 1646. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
 14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
 15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
 16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
 17 future, which amount is to be determined according to proof.

18 **OO. Claims Brought on Behalf of the Texas Subclass**

19 **COUNT I**

20 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**
 21 **(TEX. BUS. & COM. CODE § 17.41 ET SEQ.)**

22 1647. The Texas Deceptive Trade Practices Act ("Texas DTPA") declares "[f]alse,
 23 misleading, or deceptive acts" to be unlawful Tex. Bus. & Com. Code § 17.46.

24 1648. This claim is brought on behalf of the Texas Subclass against FCA.

25 1649. Plaintiff will make a demand in satisfaction of Tex. Bus. & Com. Code § 17.505(a),
 26 and may amend this Complaint to assert claims under the Texas DTPA once the required notice
 27 period has elapsed. This paragraph is included for purposes of notice only and is not intended to
 28 actually assert a claim under the Texas DTPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON TEXAS LAW)**

1650. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1651. This claim is brought on behalf of the Texas Subclass against FCA.

1652. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, failed to meet and maintain the advertised MPG rate, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1653. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, met and maintained the advertised MPG rate, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1654. Defendant knew these representations were false when made.

1655. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, not meeting and maintaining the advertised MPG rate, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1656. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were

1 defective, did not meet and maintain the advertised MPG rate, employed a “defeat device,” emitted
2 pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded
3 those expected by a reasonable consumer, were non-EPA-compliant and unreliable, and failed to
4 meet and maintain the advertised MPG rate, because Plaintiff and the other Subclass members relied
5 on Defendant’s material representations that the Affected Vehicles they were purchasing were
6 reduced-emission vehicles, efficient, and free from defects.

7 1657. As alleged in this Complaint, at all relevant times, Defendant has held out the
8 Affected Vehicles to be reduced emission, EPA-compliant vehicles. Defendant disclosed certain
9 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
10 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
11 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deployed
12 a “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer,
13 emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions
14 requirements, making other disclosures about the emission system deceptive.

15 1658. The truth about the defective emissions controls and Defendant’s manipulations of
16 those controls, unlawfully high emissions, the “defeat device,” failure to meet and maintain the
17 advertised MPG rate, and non-compliance with EPA emissions requirements was known only to
18 Defendant; Plaintiff and the Subclass members did not know of these facts and Defendant actively
19 concealed these facts from Plaintiff and Subclass members.

20 1659. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
21 had no way of knowing that Defendant’s representations were false and/or misleading. As
22 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
23 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
24 true facts about the Affected Vehicles’ emissions.

25 1660. Defendant also concealed and suppressed material facts concerning what is evidently
26 the true culture of Defendant—one characterized by an emphasis on profits and sales above
27 compliance with federal and state clean air laws and emissions regulations that are meant to protect
28 the public and consumers. They also emphasized profits and sales above the trust that Plaintiff and

1 Subclass members placed in its representations. Consumers buy diesel cars from Defendant because
2 they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
3 environment. And yet, that is precisely what the Affected Vehicles are doing.

4 1661. Defendant's false representations were material to consumers because they concerned
5 the quality and cost-effectiveness of the Affected Vehicles, because they concerned compliance with
6 applicable federal and state laws and regulations regarding clean air and emissions, and also because
7 the representations played a significant role in the value of the vehicles. As Defendant well knew, its
8 customers, including Plaintiff and Subclass members, highly valued that the vehicles they were
9 purchasing or leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid
10 accordingly.

11 1662. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the Affected Vehicles with respect to emissions,
17 starting with references to them as *reduced-emissions diesel cars* and as compliant with all laws in
18 each state, which were misleading, deceptive, and incomplete without the disclosure of the additional
19 facts set forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy
20 with respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, meets and maintains the advertised MPG rate, and whether that manufacturer
27 tells the truth with respect to such compliance or non-compliance, are material concerns to a
28 consumer, including with respect to the emissions certifications testing their vehicles must pass.

1 Defendant represented to Plaintiff and Subclass members that they were purchasing or leasing fuel-
2 efficient, reduced-emissions diesel vehicles when, in fact, they were purchasing or leasing defective,
3 high-emission vehicles with unlawfully high emissions.

4 1663. Defendant actively concealed and/or suppressed these material facts, in whole or in
5 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
6 vehicles and did not or could not comply with federal and state laws governing clean air and
7 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
8 at the expense of Plaintiff and Subclass members.

9 1664. Defendant had still not made full and adequate disclosures, and continues to defraud
10 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
11 of the Affected Vehicles.

12 1665. Plaintiff and Subclass members were unaware of the omitted material facts referenced
13 herein, and they would not have acted as they did if they had known of the concealed and/or
14 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
15 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
16 vehicles, or would have taken other affirmative steps in light of the information concealed from
17 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
18 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
19 members.

20 1666. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
21 members have sustained damage because they own vehicles that are diminished in value as a result
22 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and fuel
23 efficiency and Defendant's failure to timely disclose the defect or defective design of the EcoDiesel
24 engine, the actual emissions qualities and quantities of Defendant's vehicles, and the serious issues
25 engendered by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of
26 the true emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth
27 and compliance with applicable federal and state laws and regulations, and its failure to meet and
28 maintain the advertised MPG rate, Plaintiff and Subclass members who purchased or leased new or

1 certified pre-owned vehicles would have paid less for their vehicles or would not have purchased or
2 leased them at all.

3 1667. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
4 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
5 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
6 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
7 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
8 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
9 vehicles.

10 1668. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
11 amount to be proven at trial.

12 1669. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
13 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
14 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
15 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
16 future, which amount is to be determined according to proof.

17 **PP. Claims Brought on Behalf of the Utah Subclass**

18 **COUNT I**

19 **VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT**
20 **(UTAH CODE ANN. § 13-11-1 ET SEQ.)**

21 1670. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

22 1671. Plaintiff brings this Count on behalf of the Utah Subclass against FCA.

23 1672. Defendant qualifies as a "supplier" under the Utah Consumer Sales Practices Act
24 ("Utah CSPA"), Utah Code Ann. § 13-11-3.

25 1673. Plaintiff and the Subclass members are "persons" under Utah Code Ann. § 13-11-3.

26 1674. Sales of the Affected Vehicles to Plaintiff and the Subclass were "consumer
27 transactions" within the meaning of Utah Code Ann. § 13-11-3.
28

1 1675. The Utah CSPA makes unlawful any “deceptive act or practice by a supplier in
2 connection with a consumer transaction” under Utah Code Ann. § 13-11-4. Specifically, “a supplier
3 commits a deceptive act or practice if the supplier knowingly or intentionally: (a) indicates that the
4 subject of a consumer transaction has sponsorship, approval, performance characteristics,
5 accessories, uses, or benefits, if it has not” or “(b) indicates that the subject of a consumer transaction
6 is of a particular standard, quality, grade, style, or model, if it is not.” Utah Code Ann. § 13-11-4.
7 “An unconscionable act or practice by a supplier in connection with a consumer transaction” also
8 violates the Utah CSPA. Utah Code Ann. § 13-11-5.

9 1676. In the course of Defendant’s business, Defendant willfully failed to disclose and
10 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
11 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
12 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
13 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
14 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
15 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
16 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
17 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
18 particular standard and quality when they are not; failing to reveal a material fact, the omission of
19 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
20 the consumer; making a representation of fact or statement of fact material to the transaction such
21 that a person reasonably believes the represented or suggested state of affairs to be other than it
22 actually is; and failing to reveal facts that are material to the transaction in light of representations of
23 fact made in a positive manner.

24 1677. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
25 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
26 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
27 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
28 including NOx, as described above.

1 1678. Plaintiff and Subclass members reasonably relied upon Defendant's false
2 misrepresentations. They had no way of knowing that Defendant's representations were false and
3 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
4 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
5 their own.

6 1679. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

7 1680. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
8 reasonable consumers.

9 1681. Defendant intentionally and knowingly misrepresented material facts regarding the
10 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

11 1682. Defendant knew or should have known that its conduct violated the Utah CSPA.

12 1683. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
13 emissions systems manipulation because Defendant:

- 14 a. Possessed exclusive knowledge that it manipulated the emissions system in the
15 Affected Vehicles to turn off or limit effectiveness in normal driving
16 conditions;
17 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
18 c. Made incomplete representations that it manipulated the emissions system in
19 the Affected Vehicles to turn off or limit effectiveness in normal driving
20 conditions, while purposefully withholding material facts from Plaintiff and
21 the Subclass that contradicted these representations.

22 1684. Defendant had a duty to disclose that the NOx reduction system in the Affected
23 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
24 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
25 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
26 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
27 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
28 emission vehicles, efficient, and free from defects.

1 1692. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1693. Defendant knew these representations were false when made.

7 1694. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1695. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1696. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1697. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1698. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1699. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1700. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1701. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1702. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1703. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1704. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1705. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1706. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1707. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1708. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

QQ. Claims Brought on Behalf of the Vermont Subclass

COUNT I

**VIOLATION OF VERMONT CONSUMER FRAUD ACT
(VT. STAT. ANN. TIT. 9, § 2451 *ET SEQ.*)**

1709. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1710. This claim is brought on behalf of the Vermont Subclass against FCA.

1711. Defendant is a seller within the meaning of Vt. Stat. Ann. tit. 9, § 2451(a)(c).

1712. The Vermont Consumer Fraud Act (“Vermont CFA”) makes unlawful “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” Vt. Stat. Ann. tit. 9, § 2453(a).

1713. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices, including representing that the Affected Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a particular standard and quality when they are not; failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer; making a representation of fact or statement of fact material to the transaction such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner.

1714. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass members were deceived by Defendant’s failure to disclose that the NOx reduction system in the

1 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
2 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
3 including NOx, as described above.

4 1715. Plaintiff and Subclass members reasonably relied upon Defendant's false
5 misrepresentations. They had no way of knowing that Defendant's representations were false and
6 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
7 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
8 their own.

9 1716. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

10 1717. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
11 reasonable consumers.

12 1718. Defendant intentionally and knowingly misrepresented material facts regarding the
13 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

14 1719. Defendant knew or should have known that its conduct violated the Vermont CFA.

15 1720. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
16 emissions systems manipulation because Defendant:

- 17 a. Possessed exclusive knowledge that it manipulated the emissions system in the
18 Affected Vehicles to turn off or limit effectiveness in normal driving
19 conditions;
- 20 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 21 c. Made incomplete representations that it manipulated the emissions system in
22 the Affected Vehicles to turn off or limit effectiveness in normal driving
23 conditions, while purposefully withholding material facts from Plaintiff and
24 the Subclass that contradicted these representations.

25 1721. Defendant had a duty to disclose that the NOx reduction system in the Affected
26 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
27 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
28 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and

1 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
2 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
3 emission vehicles, efficient, and free from defects.

4 1722. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
5 members.

6 1723. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
7 reasonable consumers, including Plaintiff, about the true cleanliness and efficiency of the EcoDiesel
8 engine, the quality of Defendant's brands, the devaluing of environmental cleanliness and integrity at
9 Defendant's company, and the true value of the Affected Vehicles.

10 1724. Defendant intentionally and knowingly misrepresented material facts regarding the
11 Affected Vehicles with intent to mislead Plaintiff and the Vermont Subclass. Defendant's fraudulent
12 use of the "defeat device" and concealment of the true characteristics of the Clean Diesel engine
13 system were material to Plaintiff and the Vermont Subclass. A vehicle made by a reputable
14 manufacturer of environmentally friendly vehicles is worth more than an otherwise comparable
15 vehicle made by a disreputable and dishonest manufacturer of polluting vehicles that conceals the
16 amount its vehicles pollute rather than make environmentally friendly vehicles.

17 1725. Plaintiff and the Vermont Subclass suffered ascertainable loss caused by Defendant's
18 misrepresentations and concealment of and failure to disclose material information. Plaintiff who
19 purchased the Affected Vehicles either would have paid less for their vehicles or would not have
20 purchased or leased them at all.

21 1726. Defendant had an ongoing duty to all its customers to refrain from unfair and
22 deceptive acts or practices under the Vermont CFA. All owners of Affected Vehicles suffered
23 ascertainable loss in the form of the diminished value of their vehicles as a result of Defendant's
24 deceptive and unfair acts and practices that occurred In the course of Defendant's business.

25 1727. Defendant's violations present a continuing risk to Plaintiff as well as to the general
26 public. Defendant's unlawful acts and practices complained of herein affect the public interest.

27 1447. As a direct and proximate result of Defendant's violations of the Vermont CFA,
28 Plaintiff and the Vermont Subclass have suffered injury in fact and/or actual damage.

1 1448. Plaintiff and Vermont Subclass members are entitled to recover “appropriate equitable
2 relief” and “the amount of [their] damages, or the consideration or the value of the consideration
3 given by [them], reasonable attorney’s fees, and exemplary damages not exceeding three times the
4 value of the consideration given by [them]” pursuant to Vt. Stat. Ann. tit. 9, § 2461(b).

5 **COUNT II**

6 **FRAUDULENT CONCEALMENT**
7 **(BASED ON VERMONT LAW)**

8 1728. Plaintiff incorporates by reference all preceding allegations as though fully set forth
9 herein.

10 1729. Plaintiff brings this Count on behalf of the Vermont Subclass against FCA.

11 1730. Defendant intentionally concealed that the NOx reduction system in the Affected
12 Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had
13 defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles,
14 emitted pollutants higher than a reasonable consumer would expect in light of Defendant’s
15 advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-
16 compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth
17 and denied Plaintiff and the other Subclass members information that is highly relevant to their
18 purchasing decision.

19 1731. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
20 advertising and other forms of communication, including standard and uniform material provided
21 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
22 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
23 properly when driven in normal usage.

24 1732. Defendant knew these representations were false when made.

25 1733. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
26 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
27 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant’s
28

1 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
2 Affected Vehicles turns off or is limited during normal driving conditions.

3 1734. Defendant had a duty to disclose that the NOx reduction system in the Affected
4 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
5 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
6 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
7 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
8 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
9 emission vehicles, efficient, and free from defects.

10 1735. As alleged in this Complaint, at all relevant times, Defendant has held out the
11 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
12 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
13 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
14 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
15 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
16 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
17 making other disclosures about the emission system deceptive.

18 1736. The truth about the defective emissions controls and Defendant’s manipulations of
19 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
20 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
21 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
22 members.

23 1737. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
24 had no way of knowing that Defendant’s representations were false and/or misleading. As
25 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
26 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
27 true facts about the Affected Vehicles’ emissions.

1 1738. Defendant also concealed and suppressed material facts concerning what is evidently
2 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
3 compliance with federal and state clean air laws and emissions regulations that are meant to protect
4 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
5 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
6 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
7 environment. And yet, that is precisely what the Affected Vehicles are doing.

8 1739. Defendant's false representations were material to consumers because they concerned
9 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
10 state laws and regulations regarding clean air and emissions, and also because the representations
11 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
12 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
13 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

14 1740. Defendant had a duty to disclose the emissions defect, defective design of emissions
15 controls, and violations with respect to the Affected Vehicles because details of the true facts were
16 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
17 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
18 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
19 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
20 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
21 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
22 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
23 respect to compliance with federal and state clean air laws and emissions regulations, and
24 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
25 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
26 truth, but the entire truth. These omitted and concealed facts were material because they directly
27 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
28 Whether a manufacturer's products pollute, comply with federal and state clean air laws and

1 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
2 or non-compliance, are material concerns to a consumer, including with respect to the emissions
3 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
4 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
5 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

6 1741. Defendant actively concealed and/or suppressed these material facts, in whole or in
7 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
8 vehicles and did not or could not comply with federal and state laws governing clean air and
9 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
10 at the expense of Plaintiff and Subclass members.

11 1742. Defendant still has not made full and adequate disclosures, and continues to defraud
12 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
13 of the Affected Vehicles.

14 1743. Plaintiff and Subclass members were unaware of the omitted material facts referenced
15 herein, and they would not have acted as they did if they had known of the concealed and/or
16 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
17 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
18 vehicles, or would have taken other affirmative steps in light of the information concealed from
19 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
20 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
21 members.

22 1744. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
23 members have sustained damage because they own vehicles that are diminished in value as a result
24 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
25 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
26 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
27 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
28 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and

1 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
2 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
3 or would not have purchased or leased them at all.

4 1745. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
5 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
6 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
7 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
8 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
9 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
10 vehicles.

11 1746. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
12 amount to be proven at trial.

13 1747. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
14 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
15 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
16 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
17 future, which amount is to be determined according to proof.

18 **RR. Claims Brought on Behalf of the Virginia Subclass**

19 **COUNT I**

20 **VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT**
21 **(VA. CODE ANN. § 59.1-196 ET SEQ.)**

22 1748. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

23 1749. This claim is brought on behalf of the Virginia Subclass against FCA.

24 1750. Defendant is a "person" as defined by Va. Code Ann. § 59.1-198. The transactions
25 between Plaintiff and the other Subclass members on the one hand and Defendant on the other,
26 leading to the purchase or lease of the Affected Vehicles by Plaintiff and the other Subclass
27 members, are "consumer transactions" as defined by Va. Code Ann. § 59.1-198, because the
28 Affected Vehicles were purchased or leased primarily for personal, family or household purposes.

1 1751. The Virginia Consumer Protection Act (“Virginia CPA”) prohibits “(5)
2 misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or
3 benefits; (6) misrepresenting that goods or services are of a particular standard, quality, grade, style,
4 or model; ... (8) advertising goods or services with intent not to sell them as advertised; ... [and]
5 (14) using any other deception, fraud, false pretense, false promise, or misrepresentation in
6 connection with a consumer transaction[.]” Va. Code Ann. § 59.1-200(A).

7 1752. In the course of Defendant’s business, Defendant willfully failed to disclose and
8 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
9 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
10 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
11 consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles
12 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
13 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
14 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
15 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
16 particular standard and quality when they are not; failing to reveal a material fact, the omission of
17 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
18 the consumer; making a representation of fact or statement of fact material to the transaction such
19 that a person reasonably believes the represented or suggested state of affairs to be other than it
20 actually is; and failing to reveal facts that are material to the transaction in light of representations of
21 fact made in a positive manner.

22 1753. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
23 members were deceived by Defendant’s failure to disclose that the NOx reduction system in the
24 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
25 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
26 including NOx, as described above.

27 1754. Plaintiff and Subclass members reasonably relied upon Defendant’s false
28 misrepresentations. They had no way of knowing that Defendant’s representations were false and

1 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
2 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
3 their own.

4 1755. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

5 1756. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
6 reasonable consumers.

7 1757. Defendant intentionally and knowingly misrepresented material facts regarding the
8 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

9 1758. Defendant knew or should have known that its conduct violated the Virginia CPA.

10 1759. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
11 emissions systems manipulation because Defendant:

- 12 a. Possessed exclusive knowledge that it manipulated the emissions system in the
- 13 Affected Vehicles to turn off or limit effectiveness in normal driving
- 14 conditions;
- 15 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 16 c. Made incomplete representations that it manipulated the emissions system in
- 17 the Affected Vehicles to turn off or limit effectiveness in normal driving
- 18 conditions, while purposefully withholding material facts from Plaintiff and
- 19 the Subclass that contradicted these representations.

20 1760. Defendant had a duty to disclose that the NOx reduction system in the Affected
21 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
22 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
23 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
24 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
25 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
26 emission vehicles, efficient, and free from defects.

27 1761. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
28 members.

1762. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

1763. Defendant's violations present a continuing risk to Plaintiff as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

1764. Pursuant to Va. Code Ann. § 59.1-204, Plaintiff and the Subclass seek monetary relief against Defendant measured as the greater of (a) actual damages in an amount to be determined at trial and (b) statutory damages in the amount of \$500 for Plaintiff and each Subclass member. Because Defendant's conduct was committed willfully and knowingly, Plaintiff is entitled to recover, for himself and each Subclass member, the greater of (a) three times actual damages or (b) \$1,000.

1765. Plaintiff also seeks punitive damages, and attorneys' fees, and any other just and proper relief available under General Business Law § 59.1-204 *et seq.*

COUNT II

FRAUDULENT CONCEALMENT (BASED ON VIRGINIA LAW)

1766. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1767. Plaintiff brings this Count on behalf of the Virginia Subclass against FCA.

1768. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1769. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1770. Defendant knew these representations were false when made.

1771. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1772. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant's material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1773. As alleged in this Complaint, at all relevant times, Defendant has held out the Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements, making other disclosures about the emission system deceptive.

1774. The truth about the defective emissions controls and Defendant's manipulations of those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1775. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1776. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1777. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1778. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1779. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1780. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1781. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1782. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1783. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1784. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1785. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

SS. Claims Brought on Behalf of the Washington Subclass

COUNT I

**VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT
(WASH. REV. CODE ANN. § 19.86.010 *ET SEQ.*)**

1786. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1787. Plaintiff brings this Count on behalf of the Washington Subclass against FCA.

1788. Defendant, Plaintiff, and each member of the Washington Subclass is a “person” under Wash. Rev. Code Ann. § 19.86.010(1) (“Washington CPA”).

1789. Defendant engaged in “trade” or “commerce” under Wash. Rev. Code Ann. § 19.86.010(2).

1790. The Washington Consumer Protection Act (“Washington CPA”) broadly prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Code. Wash. Ann. § 19.96.010.

1791. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable consumer would expect in light of Defendant’s advertising campaign, and that the Affected Vehicles emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly, Defendant engaged in unfair and deceptive business practices prohibited by the Washington CPA. Defendant’s conduct was unfair because it (1) offends public policy as it has been established by statutes, the common law, or otherwise; (2) is immoral, unethical, oppressive, or unscrupulous; or (3) causes substantial injury to consumers. Defendant’s conduct is deceptive because it has the capacity or tendency to deceive.

1792. In the course of Defendant’s business, Defendant willfully failed to disclose and actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles emitted far more pollutants than

1 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
2 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
3 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
4 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
5 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
6 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
7 particular standard and quality when they are not; failing to reveal a material fact, the omission of
8 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
9 the consumer; making a representation of fact or statement of fact material to the transaction such
10 that a person reasonably believes the represented or suggested state of affairs to be other than it
11 actually is; and failing to reveal facts that are material to the transaction in light of representations of
12 fact made in a positive manner.

13 1793. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
14 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
15 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
16 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
17 including NOx, as described above.

18 1794. Plaintiff and Subclass members reasonably relied upon Defendant's false
19 misrepresentations. They had no way of knowing that Defendant's representations were false and
20 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of
21 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
22 their own.

23 1795. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

24 1796. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
25 reasonable consumers.

26 1797. Defendant intentionally and knowingly misrepresented material facts regarding the
27 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

28 1798. Defendant knew or should have known that its conduct violated the Washington CPA.

1799. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its emissions systems manipulation because Defendant:

- a. Possessed exclusive knowledge that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions;
- b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- c. Made incomplete representations that it manipulated the emissions system in the Affected Vehicles to turn off or limit effectiveness in normal driving conditions, while purposefully withholding material facts from Plaintiff and the Subclass that contradicted these representations.

1800. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-emission vehicles, efficient, and free from defects.

1801. Defendant’s conduct proximately caused injuries to Plaintiff and the other Subclass members.

1802. Plaintiff and the other Subclass members were injured and suffered ascertainable loss, injury in fact, and/or actual damage as a proximate result of Defendant’s conduct in that Plaintiff and the other Subclass members overpaid for their Affected Vehicles and did not receive the benefit of their bargain, and their Affected Vehicles have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant’s misrepresentations and omissions.

1803. Defendant’s violations present a continuing risk to Plaintiff as well as to the general public. Defendant’s unlawful acts and practices complained of herein affect the public interest.

1804. Defendant is liable to Plaintiff and the Subclass for damages in amounts to be proven at trial, including attorneys' fees, costs, and treble damages, as well as any other remedies the Court may deem appropriate under Wash. Rev. Code. Ann. § 19.86.090.

COUNT II

FRAUDULENT CONCEALMENT (BASED ON WASHINGTON LAW)

1805. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1806. Plaintiff brings this Count on behalf of the Washington Subclass against FCA.

1807. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1808. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1809. Defendant knew these representations were false when made.

1810. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1 1811. Defendant had a duty to disclose that the NOx reduction system in the Affected
2 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
3 defective, employed a “defeat device,” emitted pollutants at a much higher rate than gasoline-
4 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
5 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
6 Defendant’s material representations that the Affected Vehicles they were purchasing were reduced-
7 emission vehicles, efficient, and free from defects.

8 1812. As alleged in this Complaint, at all relevant times, Defendant has held out the
9 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
10 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
11 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
12 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
13 “defeat device,” emitted higher levels of pollutants than expected by a reasonable consumer, emitted
14 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
15 making other disclosures about the emission system deceptive.

16 1813. The truth about the defective emissions controls and Defendant’s manipulations of
17 those controls, unlawfully high emissions, the “defeat device,” and non-compliance with EPA
18 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
19 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
20 members.

21 1814. Plaintiff and Subclass members reasonably relied upon Defendant’s deception. They
22 had no way of knowing that Defendant’s representations were false and/or misleading. As
23 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant’s deception on
24 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
25 true facts about the Affected Vehicles’ emissions.

26 1815. Defendant also concealed and suppressed material facts concerning what is evidently
27 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
28 compliance with federal and state clean air laws and emissions regulations that are meant to protect

1 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
2 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
3 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
4 environment. And yet, that is precisely what the Affected Vehicles are doing.

5 1816. Defendant's false representations were material to consumers because they concerned
6 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
7 state laws and regulations regarding clean air and emissions, and also because the representations
8 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
9 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
10 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

11 1817. Defendant had a duty to disclose the emissions defect, defective design of emissions
12 controls, and violations with respect to the Affected Vehicles because details of the true facts were
13 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
14 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
15 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
16 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
17 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
18 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
19 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
20 respect to compliance with federal and state clean air laws and emissions regulations, and
21 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
22 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
23 truth, but the entire truth. These omitted and concealed facts were material because they directly
24 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
25 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
26 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
27 or non-compliance, are material concerns to a consumer, including with respect to the emissions
28 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass

1 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
2 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

3 1818. Defendant actively concealed and/or suppressed these material facts, in whole or in
4 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
5 vehicles and did not or could not comply with federal and state laws governing clean air and
6 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
7 at the expense of Plaintiff and Subclass members.

8 1819. Defendant still has not made full and adequate disclosures, and continues to defraud
9 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
10 of the Affected Vehicles.

11 1820. Plaintiff and Subclass members were unaware of the omitted material facts referenced
12 herein, and they would not have acted as they did if they had known of the concealed and/or
13 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
14 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
15 vehicles, or would have taken other affirmative steps in light of the information concealed from
16 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
17 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
18 members.

19 1821. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
20 members have sustained damage because they own vehicles that are diminished in value as a result
21 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
22 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
23 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
24 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
25 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
26 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
27 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
28 or would not have purchased or leased them at all.

1822. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions requirements, all of which has greatly tarnished Defendant's brand name, which is attached to Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.

1823. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an amount to be proven at trial.

1824. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

TT. Claims Brought on Behalf of the West Virginia Subclass

COUNT I

**VIOLATIONS OF THE WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT
(W. VA. CODE § 46A-1-101 ET SEQ.)**

1825. Plaintiff incorporates by reference all paragraphs as though fully set forth herein.

1826. Plaintiff brings this Count on behalf of the West Virginia Subclass against FCA.

1827. Plaintiff intends to assert a claim under the West Virginia Consumer Credit and Protection Act ("West Virginia CCPA") which prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce" W. VA. CODE § 46A-6-104. Plaintiff will make a demand in satisfaction of W. VA. CODE § 46A-6-106(b), and may amend this Complaint to assert claims under the CCPA once the required 20 days have elapsed. This paragraph is included for purposes of notice only and is not intended to actually assert a claim under the CCPA.

COUNT II

**FRAUDULENT CONCEALMENT
(BASED ON WEST VIRGINIA LAW)**

1828. Plaintiff incorporates by reference all preceding allegations as though fully set forth herein.

1829. Plaintiff brings this Count on behalf of the West Virginia Subclass against FCA.

1830. Defendant intentionally concealed that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions, that the Affected Vehicles had defective emissions controls, emitted pollutants at a higher level than gasoline-powered vehicles, emitted pollutants higher than a reasonable consumer would expect in light of Defendant's advertising campaign, emitted unlawfully high levels of pollutants such as NOx, and were non-compliant with EPA emission requirements, or Defendant acted with reckless disregard for the truth and denied Plaintiff and the other Subclass members information that is highly relevant to their purchasing decision.

1831. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in advertising and other forms of communication, including standard and uniform material provided with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate properly when driven in normal usage.

1832. Defendant knew these representations were false when made.

1833. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions.

1834. Defendant had a duty to disclose that the NOx reduction system in the Affected Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-

1 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
2 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
3 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
4 emission vehicles, efficient, and free from defects.

5 1835. As alleged in this Complaint, at all relevant times, Defendant has held out the
6 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
7 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
8 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
9 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
10 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
11 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
12 making other disclosures about the emission system deceptive.

13 1836. The truth about the defective emissions controls and Defendant's manipulations of
14 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA
15 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
16 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
17 members.

18 1837. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
19 had no way of knowing that Defendant's representations were false and/or misleading. As
20 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
21 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
22 true facts about the Affected Vehicles' emissions.

23 1838. Defendant also concealed and suppressed material facts concerning what is evidently
24 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
25 compliance with federal and state clean air laws and emissions regulations that are meant to protect
26 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
27 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
28

1 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
2 environment. And yet, that is precisely what the Affected Vehicles are doing.

3 1839. Defendant's false representations were material to consumers because they concerned
4 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
5 state laws and regulations regarding clean air and emissions, and also because the representations
6 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
7 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
8 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

9 1840. Defendant had a duty to disclose the emissions defect, defective design of emissions
10 controls, and violations with respect to the Affected Vehicles because details of the true facts were
11 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
12 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
13 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
14 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
15 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,
16 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
17 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
18 respect to compliance with federal and state clean air laws and emissions regulations, and
19 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
20 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
21 truth, but the entire truth. These omitted and concealed facts were material because they directly
22 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
23 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
24 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
25 or non-compliance, are material concerns to a consumer, including with respect to the emissions
26 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
27 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
28 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

1 1841. Defendant actively concealed and/or suppressed these material facts, in whole or in
2 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
3 vehicles and did not or could not comply with federal and state laws governing clean air and
4 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
5 at the expense of Plaintiff and Subclass members.

6 1842. Defendant still has not made full and adequate disclosures, and continues to defraud
7 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
8 of the Affected Vehicles.

9 1843. Plaintiff and Subclass members were unaware of the omitted material facts referenced
10 herein, and they would not have acted as they did if they had known of the concealed and/or
11 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
12 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
13 vehicles, or would have taken other affirmative steps in light of the information concealed from
14 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
15 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
16 members.

17 1844. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
18 members have sustained damage because they own vehicles that are diminished in value as a result
19 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
20 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
21 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
22 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
23 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
24 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
25 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
26 or would not have purchased or leased them at all.

27 1845. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
28 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the

1 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
2 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
3 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
4 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
5 vehicles.

6 1846. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
7 amount to be proven at trial.

8 1847. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
9 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
10 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
11 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
12 future, which amount is to be determined according to proof.

13 **UU. Claims Brought on Behalf of the Wisconsin Subclass**

14 **COUNT I**

15 **VIOLATIONS OF THE WISCONSIN**
16 **DECEPTIVE TRADE PRACTICES ACT**
(WIS. STAT. § 110.18)

17 1848. Plaintiff incorporates by reference all preceding allegations as though fully set forth
18 herein.

19 1849. Plaintiff brings this claim on behalf of the Wisconsin Subclass against FCA.

20 1850. Defendant is a "person, firm, corporation or association" within the meaning of Wis.
21 Stat. § 100.18(1).

22 1851. Plaintiff and Wisconsin Subclass members are members of "the public" within the
23 meaning of Wis. Stat. § 100.18(1). Plaintiff and Wisconsin Subclass members purchased or leased
24 one or more Affected Vehicles.

25 1852. The Wisconsin Deceptive Trade Practices Act ("Wisconsin DTPA") prohibits a
26 "representation or statement of fact which is untrue, deceptive or misleading." Wis. Stat.
27 § 100.18(1). In the course of Defendant's business, Defendant willfully failed to disclose and
28 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited

1 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
2 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
3 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
4 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
5 Defendant engaged in deceptive business practices prohibited by the Wisconsin DTPA.

6 1853. In the course of Defendant's business, Defendant willfully failed to disclose and
7 actively concealed that the NOx reduction system in the Affected Vehicles turns off or is limited
8 during normal driving conditions, that the Affected Vehicles emitted far more pollutants than
9 gasoline-powered vehicles, that the Affected Vehicles emit far more pollution than a reasonable
10 consumer would expect in light of Defendant's advertising campaign, and that the Affected Vehicles
11 emitted unlawfully high levels of pollutants, including NOx, as described above. Accordingly,
12 Defendant engaged in unfair methods of competition, unconscionable acts or practices, and unfair or
13 deceptive acts or practices, including representing that the Affected Vehicles have characteristics,
14 uses, benefits, and qualities which they do not have; representing that the Affected Vehicles are of a
15 particular standard and quality when they are not; failing to reveal a material fact, the omission of
16 which tends to mislead or deceive the consumer, and which fact could not reasonably be known by
17 the consumer; making a representation of fact or statement of fact material to the transaction such
18 that a person reasonably believes the represented or suggested state of affairs to be other than it
19 actually is; and failing to reveal facts that are material to the transaction in light of representations of
20 fact made in a positive manner.

21 1854. In purchasing or leasing the Affected Vehicles, Plaintiff and the other Subclass
22 members were deceived by Defendant's failure to disclose that the NOx reduction system in the
23 Affected Vehicles turns off or is limited during normal driving conditions, that the emissions
24 controls were defective, and that the Affected Vehicles emitted unlawfully high levels of pollutants,
25 including NOx, as described above.

26 1855. Plaintiff and Subclass members reasonably relied upon Defendant's false
27 misrepresentations. They had no way of knowing that Defendant's representations were false and
28 gravely misleading. As alleged herein, Defendant engaged in extremely sophisticated methods of

1 deception. Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
2 their own.

3 1856. Defendant's actions as set forth above occurred in the conduct of trade or commerce.

4 1857. Defendant's unfair or deceptive acts or practices were likely to and did in fact deceive
5 reasonable consumers.

6 1858. Defendant intentionally and knowingly misrepresented material facts regarding the
7 Affected Vehicles with intent to mislead Plaintiff and the Subclass.

8 1859. Defendant knew or should have known that its conduct violated the Wisconsin DTPA.

9 1860. Defendant owed Plaintiff and the Subclass a duty to disclose the truth about its
10 emissions systems manipulation because Defendant:

- 11 a. Possessed exclusive knowledge that it manipulated the emissions system in the
12 Affected Vehicles to turn off or limit effectiveness in normal driving
13 conditions;
- 14 b. Intentionally concealed the foregoing from Plaintiff and the Subclass; and/or
- 15 c. Made incomplete representations that it manipulated the emissions system in
16 the Affected Vehicles to turn off or limit effectiveness in normal driving
17 conditions, while purposefully withholding material facts from Plaintiff and
18 the Subclass that contradicted these representations.

19 1861. Defendant had a duty to disclose that the NOx reduction system in the Affected
20 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
21 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
22 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
23 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
24 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
25 emission vehicles, efficient, and free from defects.

26 1862. Defendant's conduct proximately caused injuries to Plaintiff and the other Subclass
27 members.

1 1870. Defendant further affirmatively misrepresented to Plaintiff and Subclass members in
2 advertising and other forms of communication, including standard and uniform material provided
3 with each car, that the Affected Vehicles it was selling had no significant defects, were Earth-
4 friendly and low-emission vehicles, complied with EPA regulations, and would perform and operate
5 properly when driven in normal usage.

6 1871. Defendant knew these representations were false when made.

7 1872. The Affected Vehicles purchased or leased by Plaintiff and the other Subclass
8 members were, in fact, defective, emitting pollutants at a much higher rate than gasoline-powered
9 vehicles and at a much higher rate than a reasonable consumer would expect in light of Defendant's
10 advertising campaign, non-EPA-compliant, and unreliable because the NOx reduction system in the
11 Affected Vehicles turns off or is limited during normal driving conditions.

12 1873. Defendant had a duty to disclose that the NOx reduction system in the Affected
13 Vehicles turns off or is limited during normal driving conditions and that the Affected Vehicles were
14 defective, employed a "defeat device," emitted pollutants at a much higher rate than gasoline-
15 powered vehicles, had emissions that far exceeded those expected by a reasonable consumer, and
16 were non-EPA-compliant and unreliable, because Plaintiff and the other Subclass members relied on
17 Defendant's material representations that the Affected Vehicles they were purchasing were reduced-
18 emission vehicles, efficient, and free from defects.

19 1874. As alleged in this Complaint, at all relevant times, Defendant has held out the
20 Affected Vehicles to be reduced-emissions, EPA-compliant vehicles. Defendant disclosed certain
21 details about the diesel engine, but nonetheless, Defendant intentionally failed to disclose the
22 important facts that the NOx reduction system in the Affected Vehicles turns off or is limited during
23 normal driving conditions, and that the Affected Vehicles had defective emissions controls, deploy a
24 "defeat device," emitted higher levels of pollutants than expected by a reasonable consumer, emitted
25 unlawfully high levels of pollutants, and were non-compliant with EPA emissions requirements,
26 making other disclosures about the emission system deceptive.

27 1875. The truth about the defective emissions controls and Defendant's manipulations of
28 those controls, unlawfully high emissions, the "defeat device," and non-compliance with EPA

1 emissions requirements was known only to Defendant; Plaintiff and the Subclass members did not
2 know of these facts, and Defendant actively concealed these facts from Plaintiff and Subclass
3 members.

4 1876. Plaintiff and Subclass members reasonably relied upon Defendant's deception. They
5 had no way of knowing that Defendant's representations were false and/or misleading. As
6 consumers, Plaintiff and Subclass members did not, and could not, unravel Defendant's deception on
7 their own. Rather, Defendant intended to deceive Plaintiff and Subclass members by concealing the
8 true facts about the Affected Vehicles' emissions.

9 1877. Defendant also concealed and suppressed material facts concerning what is evidently
10 the true culture of Defendant—a culture characterized by an emphasis on profits and sales above
11 compliance with federal and state clean air laws and emissions regulations that are meant to protect
12 the public and consumers. Defendant also emphasized profits and sales above the trust that Plaintiff
13 and Subclass members placed in its representations. Consumers buy diesel cars from Defendant
14 because they feel they are clean diesel cars. They do not want to be spewing noxious gases into the
15 environment. And yet, that is precisely what the Affected Vehicles are doing.

16 1878. Defendant's false representations were material to consumers because they concerned
17 the quality of the Affected Vehicles, because they concerned compliance with applicable federal and
18 state laws and regulations regarding clean air and emissions, and also because the representations
19 played a significant role in the value of the vehicles. As Defendant well knew, its customers,
20 including Plaintiff and Subclass members, highly valued that the vehicles they were purchasing or
21 leasing were fuel efficient, clean diesel cars with reduced emissions, and they paid accordingly.

22 1879. Defendant had a duty to disclose the emissions defect, defective design of emissions
23 controls, and violations with respect to the Affected Vehicles because details of the true facts were
24 known and/or accessible only to Defendant, because Defendant had exclusive knowledge as to such
25 facts, and because Defendant knew these facts were not known to or reasonably discoverable by
26 Plaintiff or Subclass members. Defendant also had a duty to disclose because it made general
27 affirmative representations about the qualities of the vehicles with respect to emissions, starting with
28 references to them as reduced-emissions diesel cars and as compliant with all laws in each state,

1 which were misleading, deceptive, and incomplete without the disclosure of the additional facts set
2 forth above regarding the actual emissions of the vehicles, Defendant's actual philosophy with
3 respect to compliance with federal and state clean air laws and emissions regulations, and
4 Defendant's actual practices with respect to the vehicles at issue. Having volunteered to provide
5 information to Plaintiff and Subclass members, Defendant had the duty to disclose not just the partial
6 truth, but the entire truth. These omitted and concealed facts were material because they directly
7 impact the value of the Affected Vehicles purchased or leased by Plaintiff and Subclass members.
8 Whether a manufacturer's products pollute, comply with federal and state clean air laws and
9 emissions regulations, and whether that manufacturer tells the truth with respect to such compliance
10 or non-compliance, are material concerns to a consumer, including with respect to the emissions
11 certifications testing their vehicles must pass. Defendant represented to Plaintiff and Subclass
12 members that they were purchasing or leasing reduced-emission diesel vehicles when, in fact, they
13 were purchasing or leasing defective, high-emission vehicles with unlawfully high emissions.

14 1880. Defendant actively concealed and/or suppressed these material facts, in whole or in
15 part, to pad and protect its profits and to avoid the perception that its vehicles were not clean diesel
16 vehicles and did not or could not comply with federal and state laws governing clean air and
17 emissions, which perception would hurt the brand's image and cost Defendant money, and it did so
18 at the expense of Plaintiff and Subclass members.

19 1881. Defendant still has not made full and adequate disclosures, and continues to defraud
20 Plaintiff and Subclass members by concealing material information regarding the emissions qualities
21 of the Affected Vehicles.

22 1882. Plaintiff and Subclass members were unaware of the omitted material facts referenced
23 herein, and they would not have acted as they did if they had known of the concealed and/or
24 suppressed facts, in that they would not have purchased purportedly reduced-emissions diesel cars
25 manufactured by Defendant, and/or would not have continued to drive their heavily polluting
26 vehicles, or would have taken other affirmative steps in light of the information concealed from
27 them. Plaintiff's and Subclass members' actions were justified. Defendant was in exclusive control
28

1 of the material facts, and such facts were not generally known to the public, Plaintiff, or Subclass
2 members.

3 1883. Because of the concealment and/or suppression of the facts, Plaintiff and Subclass
4 members have sustained damage because they own vehicles that are diminished in value as a result
5 of Defendant's concealment of the true quality and quantity of those vehicles' emissions and
6 Defendant's failure to timely disclose the defect or defective design of the diesel engine system, the
7 actual emissions qualities and quantities of Defendant's vehicles, and the serious issues engendered
8 by Defendant's corporate policies. Had Plaintiff and Subclass members been aware of the true
9 emissions facts with regard to the Affected Vehicles, and Defendant's disregard for the truth and
10 compliance with applicable federal and state laws and regulations, Plaintiff and Subclass members
11 who purchased or leased new or certified pre-owned vehicles would have paid less for their vehicles
12 or would not have purchased or leased them at all.

13 1884. The value of Plaintiff's and Subclass members' vehicles has diminished as a result of
14 Defendant's fraudulent concealment of the defective emissions controls of the Affected Vehicles, the
15 unlawfully high emissions of the Affected Vehicles, and the non-compliance with EPA emissions
16 requirements, all of which has greatly tarnished Defendant's brand name, which is attached to
17 Plaintiff's and Subclass members' vehicles, and made any reasonable consumer reluctant to purchase
18 any of the Affected Vehicles, let alone pay what otherwise would have been fair market value for the
19 vehicles.

20 1885. Accordingly, Defendant is liable to Plaintiff and Subclass members for damages in an
21 amount to be proven at trial.

22 1886. Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with
23 intent to defraud, and in reckless disregard of Plaintiff's and Subclass members' rights and the
24 representations that Defendant made to them, in order to enrich Defendant. Defendant's conduct
25 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the
26 future, which amount is to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of members of the Nationwide RICO Class, California Class, and Multistate Class, respectfully request that the Court enter judgment in Plaintiffs' favor and against Defendants, as follows:

- A. Certification of the proposed Nationwide RICO Class, California Class, and Multistate Class, including appointment of Plaintiff's counsel as Class Counsel;
- B. An order temporarily and permanently enjoining FCA and Bosch from continuing the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint;
- C. Injunctive relief in the form of a recall or free replacement program;
- D. Restitution, including at the election of Class members, recovery of the purchase price of their Affected Vehicles, or the overpayment or diminution in value of their Affected Vehicles;
- E. Damages, including punitive damages, costs, and disgorgement in an amount to be determined at trial, except that monetary relief under certain consumer protection statutes, as stated above, shall be limited prior to completion of the applicable notice requirements;
- F. An order requiring FCA and Bosch to pay both pre- and post-judgment interest on any amounts awarded;
- G. An award of costs and attorneys' fees; and
- H. Such other or further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all claims so triable.

DATED: May 16, 2017

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Steve W. Berman

Steve W. Berman (*pro hac vice*)

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